IN THE

Supreme Court of the United States

October Term, 1946

No. 1361

RALPH B. MELLOR,

Petitioner.

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

EUGENE D. O'SULLIVAN,
HUGH J. BOYLE,
Of Omaha, Nebraska,
Counsel for Petitioner.

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

OPINION SOUGHT TO BE REVIEWED

Your petitioner, Ralph B. Mellor, respectfully prays that a Writ of Certiorari issue to review a decision of the Circuit Court of Appeals for the Eighth Circuit, rendered on the 10th day of April, 1947, at Kansas City,

Missouri, affirming the conviction of your petitioner in the United States District Court for the District of Nebraska, Norfolk, Nebraska, Division, Honorable John W. Delehant, District Judge, presiding.

SUMMARY AND SHORT STATEMENT OF THE MATTERS INVOLVED

Ralph B. Mellor and Charles J. Ford were jointly indicted in the Norfolk Division, District of Nebraska, on March 21st, 1945, under the United States Anti-White Slave Law for alleged violations of Section 398 of Title 18 of the United States Criminal Code.

The material portions of the Indictment which was returned against the above-named appellants were as follows:

> "That RALPH B. MELLOR and CHARLES J. FORD, on or about August 10, 1944, did unlawfully, wilfully, knowingly, and feloniously transport and cause to be transported, and aid and assist in obtaining transportation for and in transporting, in interstate commerce from the ranch home of Defendant RALPH B. MELLOR in Holt County, in the Norfolk Division of the District of Nebraska, Circuit aforesaid, and within the jurisdiction of this Court, to the City of Moran, in the State of Wyoming, two certain girls, to-wit, Doreen L. Hasenpflug and Lois Jean Milacek, for the purpose of prostitution and debauchery and for other immoral purposes, and with the intent and purpose on the part of them, the said RALPH B. MELLOR and CHARLES J. FORD, and each of them, to induce, entice, and compel said girls, and each of them, to give themselves up to debauchery and to engage in other immoral practices; contrary to the provisions of the statute in such case made and provided, and against the peace and dignity of the United States of America (18 U. S. C. 398)."

The appellants concede that same was returned regularly by a proper Grand Jury in the proper District and Division of the United States Court.

The portions of the United States Statutes, which we deem to be applicable to our proposed legal inquiry, are as follows:

Section 397, of 18 U. S. C. A., states in part:

"WHITE-SLAVE TRAFFIC; TERMS DEFINED. The term 'interstate commerce,' as used in this section and sections 398 to 404 of this title, shall include transportation from any State or Territory or the District of Columbia to any other State or Territory of the District of Columbia."

Section 398, of 18 U. S. C. A., recites in part:

"SAME; TRANSPORTATION OF WOMAN OR GIRL FOR IMMORAL PURPOSES * * *. Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate * * * commerce, * * * any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice or compel such woman or girl to become a prostitue or to give herself up to debauchery, or to engage in any other immoral practice * * * shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $5,000, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court. (June 25, 1910, c. 395, '2,36 Stat. 825.)"

The appellant, prior to entry of a plea of Not Guilty in this case, filed in the order named Motion For Bills of Particulars (T. of R. 9 to 13), Motion to Quash (T. of R. 13 to 15), and Special Demurrer (T. of R. 15 to

17), all of which were overruled by the Court (T. of R. 60 to 62).

The Motion For a Bill of Particulars (T. of R. 9 to 13), if the Court had granted same, we contend would have served to advise the defendant of the nature and cause of the accusation made against him in the Indictment.

The Motion to Quash (T. of R. 13 to 15) and the Special Demurrers (T. of R. 15 to 17), filed by the defendant, were, as far as the body of same were concerned, alleged in identical language, and among other things related to the fact that the Indictment was not alleged in conformity with the statute or language of similar import; was duplicitous; contained conclusions and not facts; was vague, indefinite and uncertain; as drawn was tantamount to a denial to the defendant of liberty without due process of law, as guaranteed to them under the 5th United States Constitutional Amendment; and a denial to the defendant of the right to be informed of the nature and cause of the accusations made against him under the 6th United States Constitutional Amendment; as drawn did not charge a crime against the laws of the United States; and it was also claimed that there was a misjoinder of parties in that both the defendants, Mellor and Ford, were charged in one Count with transporting both of the two women.

It is significant to note that the witnesses subpoenaed by the Government (T. of R. 18 and 19) were the following:

Doreen Lavaun Hasenpflug, State Industrial School for Girls, Geneva, Nebraska.

Lois Jean Milacek, State Industrial School for Girls, Geneva, Nebraska.

Matron, or someone designated by her, State Industrial School for Girls, Geneva, Nebraska, to bring Doreen Lavaun Hasenpflug and Lois Jean Milacek to Norfolk, Nebraska.

Clement B. Pedersen, FBI, Omaha, Nebraska, to bring signed statement of defendant, Charles J. Ford, dated March 15, 1945.

Jim Slaton, Signal Mountain Lodge, Moran, Wyoming, to bring with him (a) registration card reflecting that Mellor and Charley Ford, Stuart, Nebraska, registered at Signal Mountain Lodge, Moran, Wyoming, on August 12, 1944, Cabin No. 15, and checked out on August 19, 1944; (b) registration card reflecting that Mellor and Ford stayed in Cabin No. 15, Signal Mountain Lodge, Moran, Wyoming, from August 20, 1944, to August 27, 1944.

Viola Wells, Signal Mountain Lodge, Moran, Wyoming.

Wanda Newsome, Signal Mountain Lodge, Moran, Wyoming.

Olin O. Emery, Sheriff, Teton County, Jackson, Wyoming, to bring with him (a) registration card reflecting that Mellor and Charley Ford, Stuart, Nebraska, registered at Signal Mountain Lodge, Moran, Wyoming, on August 12, 1944, Cabin No. 15, and checked out on August 19, 1944; (b) registration card reflecting that Mellor and Ford stayed in Cabin No. 15, Signal Mountain Lodge,

Moran, Wyoming, from August 20, 1944, to August 27, 1944.

Mrs. Alice Nemec, R. F. D. No. 2, Spencer, Nebraska.

In spite of the fact that all of these witnesses were subpoenaed by the Government, however, the only witnesses in the case were Lois Jean Milacek (T. of R. 105 to 120) and Doreen Lavaun Hasenpflug (T. of R. 120 to 131), who were the two complaining witnesses, and a Mrs. Alice Nemec (T. of R. 131), who testified only that she was a Spencer, Nebraska, housewife and had an orchestra which played for a dance at Lynch, Nebraska, on Tuesday night, August 8th, 1944, which dance the two young women attended the first night after having met Mellor and Ford.

The following is an abstract of the pertinent testimony produced upon the trial:

RESPONDENT'S EVIDENCE

Testimony of Lois Jean Milacek

Lois Jean Milacek, one of the complaining witnesses, testified (T. of R. 105 to 120), in part, as follows:

> "That in August of 1944 Miss Hasenpflug and I were on the road near O'Neill on our way to Lynch, Nebraska. As we were walking, a light blue coupe occupied by two men, overtook us. They stopped and inquired our destination, and we told them we were going to Lynch, Nebraska. They said they had to go to their ranch at Atkinson, Nebraska, to do their chores, but if we would like to get in the car, they would take us to Lynch after they had completed their chores at the ranch. So we got into the car and drove with them to Atkinson. On the way to Atkinson they told us their names were Ralph Mellor and Charley

Ford, and these two men are here in the court room at this time, as defendants.

"*We stopped at Atkinson and the men went to see about a truck so they could ship some cattle before going on their vacation.* We went to Mellor's ranch, arriving there in the early part of the evening. We stayed at the ranch two or three hours, and then the four of us, Mellor, Ford, Doreen Hasenpflug and I, started for Lynch to attend a dance. Mr. Mellor and Mr. Ford did not attend the dance, but Doreen Hasenpflug and I did, and after the dance we returned to the car, which was parked near the dance hall. Doreen's mother saw her and came and got her, but I got in the car with two men and returned to the ranch with Mellor and Ford. I stayed at the ranch that night, and slept in a bedroom by myself, and quite early the next morning Mr. Mellor and I got ready and went back to Lynch to get Doreen Hasenpflug. When we arrived at Lynch, Doreen got ready and got into the car with Mr. Mellor and myself, and we drove to Spencer, Nebraska, and from there we went to O'Neill, Nebraska. When we arrived in O'Neill, we met Mr. Ford, and Mr. Mellor gave Doreen some money and we bought some clothes. From there the four of us went back to the ranch, and stayed there all night, and Doreen and I slept together.

"When the four of us were in the car together that night, going to the dance at Lynch, *the first night we had met them, Mr. Mellor said he was going on a fishing vacation near Jackson, Wyoming, and asked us if we wanted to go along, and that if we did not want to go along, that there were some girls in Atkinson that would go with them.* He said if we went we could have anything we wanted or do anything we wanted after we got there. He also said we could either live with them, or he could get us a separate cabin.

"The last night I spent at the Mellor ranch, be-

fore we sarted on the trip, I had told the two men I would go along with them. That night Doreen and I went to bed together. Later in the night we woke up, and Mr. Mellor and Mr. Ford were in bed with us. Mr. Ford lay closest to me, and Mr. Mellor lay closest to Miss Hasenpflpg and they were bothering us. Mr. Ford tried to take my clothes off and force me to have intercourse with him, but I would not let him. This was the night before we started on the trip to Wyoming. We stayed at the ranch that day until evening, and started on our trip in the evening in Mr. Mellor's car. Mr. Ford, Mr. Mellor, Doreen Hasenpflug and I left the ranch in the car and stopped at Atkinson for a short time, and then stopped at Valentine, and ate supper.

"When we left Valentine that evening, Doreen Hasenpflug and I sat in the back, and Mr. Mellor and Mr. Ford sat in the front seat, and we drove on into the night. *Miss Hasenpflug and I went to sleep, and we were awakened by Mr. Mellor, who told us this was the state line, and that we could get out and walk across the state line, as it 'was against the law for him to take us—take minors—over the state line.' This was the state line between Nebraska and Wyoming. After we were awakened we got out and walked a few steps, about the length of the car. Then the men drove the car up to where we were and we got in again.* The four of us continued to drive all night and we had breakfast at Casper, Wyoming, and we next stopped at Riverton, Wyoming. At Riverton Mr. Ford gave me some money and Mr. Mellor gave Doreen some money, with which we bought some clothes at Riverton, and then the four of us drove on to Moran.

"When we arrived at Moran they asked whether they could get a place to stay, and they told us to go to *Signal Mountain Lodge, which is about a mile and a half from Moran, and the four of us drove there.* Signal Mountain Lodge is in Wyoming. When we got

to Signal Mountain Lodge we stopped near the building where the office is, and Mr. Mellor and Mr. Ford went into the office, and both of them came out again and got into the car with us. In the presence of Mr. Mellor and Miss Hasenpflug, Mr. Ford told me they had gotten one cabin with two rooms, and that he had registered me as his wife. I am not married, and I am not the wife of Charles Ford, nor have I ever been married.

"When Mr. Mellor and Mr. Ford, Doreen Hasenpflug and I were present, I heard Mr. Mellor tell Doreen that he had registered her as his wife.

"From the office four of us drove in the car to Cabin 15, and all four of us got out and went into the cabin. The cabin had two bedrooms and the front of it was a porch. There was a bed in each of the bedrooms. It was evening when we arrived at the cabin, and Ralph Mellor and Doreen Hasenpflug had one room, and Charley Ford and I had the other bedroom. Doreen and I stayed at Signal Mountain Lodge with Ralph Mellor and Charley Ford for ten days, and during the time we occupied Cabin 15, I slept with Mr. Ford and Doreen slept with Mr. Mellor, each couple in a separate bedroom.

"Ford forced me to have intercourse with him, about four or five times. Miss Hasenpflug stayed at the cabin with Mellor and Ford for a week or ten days, and at the expiration of that time, Doreen Hasenpflug and I went to Jackson. We walked. At that time Mr. Mellor and Mr. Ford had gone to Jackson. When we got to Jackson we saw them that night, but they were leaving. We talked to both Mr. Mellor and Mr. Ford at Jackson.

"I told him he had promised me he would send us home when we wanted to go, and he said that he did not recall of ever saying that. He did not give me any money with which to return home. In this conversation which I had with Mr. Ford, I did not hear Mr. Mellor say anything.

"From Jackson, Wyoming, Miss Hasenpflug and I went to California, and arrived back home from California the 22nd of October, 1944.

"The orchestra that played at the dance, which we attended that night at Lynch, was Alice Cassidy; I think her maiden name was Nemec. I know the Mellor ranch was in Nebraska. I do not remember what date in August this dance was, but it was on a Tuesday."

Cross-Examination—By Mr. O'Sullivan

Miss Milacek, continuing (R. 111 to 120):

"There is a road a short distance north of O'Neill that turns westward toward Atkinson and the main road continues northward to Spencer, and we were south of the fork in the road, about a quarter of a mile, and we were walking north. When this car approached it was also going northward. Neither of us signaled that we wanted a ride. We were going to walk to Lynch, Nebraska, a distance of about 29 miles.

"We had arrived in O'Neill the Saturday night previous to this Tuesday. *We had no relatives in O'Neill, but were with Iris Pinkerman, a girl I knew at O'Neill.* We had not been at Norfolk on Saturday night, but had come from Lynch to O'Neill. We had ridden with some people from Lynch to O'Neill who were going to a dance. We did not signal them for a ride, but we had met them in Lynch and rode with them to O'Neill. This car stopped and Mr. Mellor was sitting in the front seat, and Mr. Ford was driving. When the car pulled up, Doreen and I got in the back seat, but before we got in we told them we were going to Lynch, but did not say, at first, that we were going west. They told us before we got into the car that they had to go to the ranch and do their chores, and they would then take us to Lynch. We were not forced into the car but got in of our own accord. If

we had not been offered the ride we would have walked the 29 miles to Lynch.

"We drank on the way to Atkinson and then in Atkinson. Mr. Mellor had been drinking but he was not under the influence of liquor.

"I do not know whether they did any chores at the ranch, but they were doing something about the buildings, and in about three hours we started for Lynch. No one forced us to drink the liquor; they offered it to us and we drank it.

"The dance was in Lynch and we stayed at the dance until after midnight. We were to meet these men after the dance. They told us where they would park the car, and we went and found it after the dance, and we went of our own free will.

"I got in the car, but the other girl went home with her mother, who came and got her. I watched her go home with her mother, which was not even a block away. Then Mr. Ford, Mr. Mellor and I went back to the ranch house. I went of my own free will.

"Both Mellor and Ford told me before we got to Atkinson that they were going to the Jackson Hole Country, and had made some preparations to spend some time near Moran at Signal Mountain Lodge, and also told me they had a boat and trailer that they were going to take along. Mr. Mellor told us that he had gone there on vacations for a number of years.

"At that time I had a sister in California who is older than I am.

"I do not remember whether or not I told that I had a sister in California.

"Ford and Mellor told us they were leaving for Moran, Wyoming, for this fishing camp as soon as some livestock and machinery could be disposed of, and that their purpose in stopping at Atkinson was for the purpose of getting some truck to pick up

horses and livestock, machinery and other stuff that Mr. Mellor was going to sell, and that is why they stopped. I do not know whether they engaged any trucks while we were at Atkinson, and I do not know whether any livestock and property were picked up and taken away for sale while we were at the ranch.

"When we stopped at Atkinson they said they were going to get a truck or trucks so they could ship their cattle, and I remember they talked about what they were going to ship to market, but I don't remember what they said, but they said after they sold this property, *they were going to be on their way to a vacation at Moran, but we never asked to go with them on this trip to Moran.*

"There was an arrangement made that I would go back to the ranch-house with these two men, and that somebody would return the next day for her. This arrangement was made at Lynch that night after the dance. My home was five miles southeast of Lynch, but I did not go home that night. I was not prevented from going, but I had no way of getting home.

"Q. And you had your mind made up then to go west on this trip, didn't you?

"A. Yes.

"We got to the ranch at almost morning. I do not remember whether Mr. Ford went into the house at all, but I went into the house for a short time, and went into one of the bedrooms and went to bed. I don't know what Mr. Mellor did.

"Mellor told us that night that he would go back in the morning and get her.

"We went back to Lynch and went to her home. She did not have any personal belongings with her; all she had was her purse. Neither one of us had taken anything with us when we went to O'Neill Saturday. Mr. Mellor, Doreen and I left Lynch in the

car and we did not have any luggage with us. We drove with him to O'Neill, where we met Mr. Ford. I think he was in the garage working on their boat. I did not see the trailer. Mellor, Ford, Doreen and I then went to the ranch and stayed there all night. Doreen and I were in one room and Ford and Mellor was in some other part of the house when we went to bed. I did not have any sexual relations with either Ford or Mellor at the ranch-house. We stayed there two nights and a part of a night, and I saw the boat for the first time the night that we left. We left the ranch-house about seven or eight o'clock in the evening, and *the boat was in the trailer hooked on behind the car.*

"When we left the ranch-house, Mr. Ford was driving and drove straight through without stopping, except for meals. The suggestion of walking across the state line did not come from me nor my companion.

"When we got to the state line that divides Nebraska from Wyoming we were both told to get out of the car. I do not know whether it was the state line or not; there was no sign there. It was west of Harrison. We walked about the length of the car and then got back in again. Mr. Ford said something that it was against the law to take us across, but I never suggested that to them.

"We eventually got to Wyoming and to this camp, and stayed there about a week or ten days. *I know a man by the name of 'Blackie.'* I do not know if his name is Walter Look, nor if he is a guide there, but I saw him working around there. *One night, I don't know whether it was the second night or not, he put my companion and me in another cabin, and stayed in the cabin with us.* This cabin was not very far from Cabin 15. He had a key and unlocked the door to this cabin, but I don't think he stayed there all night.

"We left the camp and walked part way to Jackson. We did not leave with anyone. We walked

about two or three miles and caught a ride; some car stopped and picked us up. We had not indicated that we wanted a ride, and I do not know who the man was that gave us the ride, and we did not see him afterwards in Jackson. It is about 32 miles from the camp to Jackson. While we were in Jackson we saw and talked to Mr. Ford that night.

"We met a couple of young boys in Jackson; neither one was wearing a uniform. We had met them at the Log Cabin Bar, which was next to Log Cabin Cafe, where we were working. This was about a week after we got to Moran, Wyoming. We *stayed one night with these two boys.* I do not remember what the other boy's name was, but one of them was named Joe.

"When we saw Mr. Ford in Jackson, we told him that we had jobs as waitresses and asked him to loan us five dollars, and he did loan us five dollars. At that time we had quit our jobs. In Jackson we met Rose Hopkins and a man who was not her husband, and after Ford had given us the five dollars, we went as far as Pocatello, Idaho, with Rose Hopkins and this man and from there we hitch-hiked to Los Angeles, California, and we stayed in Los Angeles about seven weeks. My sister is at San Francisco, but she came down to Los Angeles to see me. I arrived back home October 22, 1944.

"Q. Well, didn't a matron from Los Angeles bring you right back to Lynch? That is true, isn't it?

"A. Yes, sir. She came and took me as far as Fremont.

"She was a matron connected with the juvenile authorities, and did accompany me as far as Fremont. The other girl was not brought with me. My folks live at Lynch.

"Q. But your home is in the Geneva Industrial School?

"A. Yes.

"Q. And you were sent there on matters other than those growing out of this case, weren't you? That is true, isn't it?

"A. It was mostly this case.

"Q. You were given a court trial before a District Judge—Judge Mounts?

"A. Yes, sir.

"Q. And you were convicted and sent to the Industrial School in Geneva, Nebraska, weren't you?

"A. Yes.

"Q. How long have you been there?

"A. Nine months.

"I do not remember exactly how much money Mr. Mellor gave us in O'Neill, but I think it was around five dollars, and we spent that money for clothes. When we got to the camp all we had in the way of luggage was what we had bought on the way. Mellor gave the money to my girl companion and Mr. Ford gave me money. I claim the amount of money given me was about $25.00 or $30.00. I do not know the exact amount. We spent the money for clothes.

"*When we were in this cabin camp, I had sexual relations with Walter Look, referred to as 'Blackie.'* My girl companion did not have sexual relations with him. All three of us were in one bed there, but he did not stay all night.

"The third night after we met these men and had gone to the ranch, Ford and Mellor made their appearance in our room. They were trying to fool around with us, and we told them to quit it, to cut it out. And they did quit it, and that is all there was to that incident, except they stayed there the rest of the night. 'When we told them to stop it, well, one of the men said, 'All right, then, you're not going,' and

when we said we didn't care, they started being nice to us again.' We did voluntarily get in the car and go with them, and were not forced in any way, and we did not ask Mr. Ford for any more than five dollars in Atkinson.

"I had a disagreement or quarrel with Mellor at Signal Mountain Lodge, but he did not tell me nor my girl companion to get out of there. We arrived there close to five or six o'clock in the evening, and never stopped any place for over-night or for rest. It was a hard trip and we were all tired when we got there. I do not remember whether Mr. Ford drove all of the way or not.

"This cabin had two rooms, with an outside door to each room, which led off the porch along the front of the cabin, and there was a partition straight through the cabin. There was a connecting door between the rooms which could be locked from one room. I was on the inside when that latch was on part of the time. It is not true that we two girls were assigned to space on one side, and Mellor and Ford on the other. The next morning all four of us were over to the dining room of the lodge to eat, but I do not remember that Mellor got mad and would not finish eating breakfast, and we two women did not stay there after the men left. And it is not true that after we got back to the cabin, that Mellor said, 'You get out of here and get a-going.' *Mellor and Ford had told us that whether we went along on the trip or not, they had planned to go and were going on that trip.*"

Testimony of Doreen Lavaun Hasenpflug

Doreen Lavaun Hasenpflug, the other complaining witness, testified (R. 120 to 131) as follows:

"I recall that I was with Miss Milacek on an afternoon in the early part of August, 1944, on Highway No. 12, near the 'Danceland Corner' near O'Neill,

Nebraska. We were going to our home at Lynch. It was not very long after dinner, around 1:00 o'clock, on August 8, 1944, when a bluish-gray car, with two men in the car, stopped and asked us if we wanted a ride. Mr. Mellor, one of the men in the car, asked the question, but I did not know his name at that time, but afterwards I learned that was his name, and the other man was Charley Ford, and they are now sitting at the table in the court room. I asked them how far they were going from the Danceland Corner, because there is a road turning in either direction to Atkinson. They said they had some business to take care of at Atkinson, and that they had chores to do at home. We got in the car and went to Atkinson with them, and went out to the sale barn at Atkinson, and Mr. Mellor took care of his business there. This highway we were traveling and Atkinson are both located in Nebraska. After they finished their business, we went downtown in Atkinson and they bought some beer, which we did not drink in Atkinson. Mr. Ford got some whiskey there, and we drank part of it in Atkinson, and we then went to Mellor's ranch, arriving there about five or six o'clock.

"*On the trip to the ranch, which is near Atkinson, Nebraska, the men said they were taking their usual trip to Jackson Lake, and asked us if we wanted to go along, and we said we would see about it. Later in the day on our trip from Butte to Lynch we told them definitely we would go with them.* After staying at the ranch two or three hours on August 8, 1944, the four of us, Ford, Mellor, Lois Milacek and I, took the highway around by Naper to go home, but we went to Naper first. At Naper we went into a beer parlor and bought some beer, and drank it, and from there we went to Butte. At Butte we went into the Club Beer Parlor, and the four of us drank some beer in there. From there we went to Spencer, Nebraska, and went into another beer parlor, but they refused to sell beer to us girls there, and from Spencer we went to

Lynch, Nebraska, where Lois Jean and I went to a dance.

"*During the trip from the Mellor ranch to Lynch there was further conversation about the men's vacation trip.*

"Q. Relate, Miss Hasenpflug, what was said?

"A. *I don't remember the exact words, but I know we made our plans definitely to go with them.*

"First we asked them how we were going to live there. I asked them if we were going to live separate, or if we had to live with them, and they said we could live separate, and they would still pay for our meals and our rooms. Mr. Mellor said that, and they said whenever we were ready to come home they would be perfectly willing to pay our transportation home.

"After the dance we went to Mr. Mellor's car, which was parked near the dance hall, and Mr. Mellor and Mr. Ford were there, and we got into the car. I did not leave Lynch with them because my mother called me home, and I went home. Miss Milacek stayed in the car with Mr. Mellor and Mr. Ford, and I did not see them again until the next morning, when I saw Mr. Mellor at the cafe. I did not know he was coming to town that morning. Lois Jean Milacek was with him, and we went with him from Lynch to Spencer, Nebraska, and from there to O'Neill. We stopped at Spencer, and Mr. Mellor got a case of beer and some ice and put that in the back seat of the car.

"We remained at O'Neill until around five or six o'clock that afternoon, and we saw Mr. Ford there in front of the Goetz beer parlor, and then about five or six o'clock, Mr. Mellor, Mr. Ford, Lois Jean Milacek and I left O'Neill for the Mellor ranch, and we arrived there about seven o'clock. The Mellor ranch is located in Nebraska, and we remained there for the night, that is the night of the day that Mr. Mellor came for me at Lynch.

"That night Lois and I slept together in a bedroom, and Mr. Ford and Mr. Mellor later got into bed with us. Mr. Ford was closest to Miss Milacek and Mr. Mellor was closest to me. I did not know they were there during the night until I awoke towards morning. Mr. Mellor did not say anything to me, but he took off my underclothes, and I slapped him and told him to leave me alone. Mr. Mellor got mad and got up, and Mr. Ford went with him.

"The last day we were at the ranch we prepared to go on the trip, and we left on Friday night about seven o'clock in Mr. Mellor's car. There were Mr. Mellor, Mr. Ford, Lois and I in the car and we went to Ainsworth, Nebraska, first, but I do not remember if we stopped there. We had dinner at Valentine, Nebraska. When we left the ranch, Mr. Ford was driving and Miss Milacek was seated in the front seat with him, and Mr. Mellor and I were seated in the back seat.

"After we left Valentine Miss Milacek and I fell asleep, and we were awakened when we came to a place they called the State Line. I do not recall who awakened us. They said that was the State Line and it was against the law to take minors across the State Line.

"I believe Mr. Mellor said that, and after that we got out and walked about the length of the car. Mr. Mellor had asked to walk across the line. They then drove up and picked us up again, and we got back into the car and the car was driven on. This State Line was supposed to be the Nebraska and Wyoming State Line.

"We next stopped at Casper, Wyoming, and ate breakfast . Before leaving Nebraska on this trip we had purchased some clothes at O'Neill, Nebraska, on Wednesday, on the trip from Lynch to the Mellor farm. Mr. Mellor gave me five dollars, and Lois and I each purchased a dress. After breakfast at Casper,

we next stopped at Riverton, Wyoming, and Mr. Mellor gave me some money, and Mr. Ford gave Lois some money, and we made some purchases at Riverton. We ate dinner in a small town in Wyoming, and drank some beer in the same town at the Antique Bar.

"On this trip, while Mr. Mellor and I were sitting in the back seat, Mr. Mellor got angry at me. I don't remember what it was, but I remember he was going to make me get out and walk. I know he awakened me and I slapped him. *We finally arrived at Moran, and they tried to get a cabin there but were unable to, so we went to Signal Mountain Lodge, which was about five and a half miles from Moran.* When we arrived at Signal Mountain Lodge, Mr. Mellor and Mr. Ford got out of the car and went into the office, and 'purchased' a cabin for us. After we got down to the cabin, No. 15, *Mr. Mellor told me that he had registered me as his wife.* I was not married to him, and have never been married and am not married now. *I heard Mr. Ford tell Miss Milacek that he had registered her as his wife also.*

"Cabin No. 15 was a two-room cabin, with a bed in each room, and a porch the length of the cabin, and a door running from both rooms to the outside. Lois Jean and I stayed at Signal Mountain Lodge about ten days, and during the time I stayed at Signal Mountain Lodge, *I slept with Mr. Mellor in one of the bedrooms in Cabin 15, and Mr. Ford and Lois Milacek occupied the other room.* During this Mr. Mellor had sexual intercourse with me. After staying at Signal Mountain Lodge ten days, Lois and I went to Jackson, Wyoming, and we saw Mr. Ford and Mr. Mellor in a gambling place in Jackson, and I told Mr. Mellor that I was ready to go home and wanted the money he had promised me, and he said that he did not remember of ever promising me money to go home on, and he did not give me any money then, but he had before that. Lois Jean and I stayed at Jack-

son about two nights altogether, and from there we went to California, and I returned home to Nebraska the second week in September of 1944."

Cross-Examination—By Mr. O'Sullivan (R. 124 to 131)

"We were on the highway north of O'Neill on the 8th of August, 1944, having been to O'Neill to a dance on Saturday night previous. We had been in O'Neill all of the time, and did not go to Omaha or Norfolk during that time. We had driven to O'Neill from Lynch in a car.

"Q. You did not tell your folks where you were going?

"A. No.

"We stayed at O'Neill from Saturday night until Tuesday afternoon, and *stayed at the Golden Hotel.* We had come from Lynch with two boys; the name of one I did not know, but the name of the other boy was Junior Clinton from Spencer. I was with neither one of them.

"They picked us up at Lynch, and brought us to O'Neill to the dance, but we did not see them after we got there. I think it was some time Monday that we left the Golden Hotel, where we paid $2.00, but I do not remember what time we left O'Neill.

"Before we came out on the highway, we came from the New-way Cafe in O'Neill, but I do not remember how long we had been there. I do not remember anything about where we were from the time we left the Golden Hotel until we got to the cafe. When we were going along this highway, neither of us were lame. We were going to walk to Lynch and neither one of us signalled this car to pick us up. It is about 38 miles to Lynch.

"If somebody gave us a ride, we would probably ride, but we were not doing anything to indicate that

we wanted a ride. When this car stopped, we were asked if we wanted a ride, and I asked them how far they were going, and they told us, and we asked them if they would take us to Lynch, Nebraska. Mr. Mellor was the one that asked us if we wanted a ride. It is not true that as we got close to Atkinson for the first time we said that we wanted to go to Lynch, and Mr. Mellor did not say, 'Why didn't you tell that back at the cross-roads, because we are going west, and you should have gone north?' We had told them before we ever got in the car that we wanted to go to Lynch. They told us what their names were, but I do not remember that they asked us what our names were. They told us where they were going and what their occupations were. They stopped at Atkinson and went to the sales pavilion to make some arrangements for some trucks to haul some livestock to market the next day, and *Mr. Mellor said they were going to sell this livestock and personal property before they went to Jackson, Wyoming, on a fishing trip, but he did not say anything about going out there on business.*

"Before anything was said by either of them or by either of us about going with them on this trip, we were told by Mr. Mellor and Mr. Ford that they were going to Moran, Wyoming, and that they had a boat on a trailer that they were going to attach to the car; and that they were going as soon as they had sold this property, and Mr. Mellor had gone to this place for years on vacation trips. We did not make the suggestion that we would like to go along.

"I have a sister, two sisters-in-law, and two brothers in Richmond, California, which is near San Francisco, but they are not at the same location as the sister of Lois Jean, but we did not tell Ford and Mellor that we were going to California to get a job or visit relatives.

"We got some beer and whiskey at Atkinson and we drank some of it. I had been drinking liquor

before, but I do not remember for how long; approximately about a year. My father is in the liquor business. I do not know whether my folks knew when I went to O'Neill, but I did not tell them. Lois and I had been making trips similar to the O'Neill trip for six or seven months. Sometimes we would go out on the highway and catch a ride. We had been to Norfolk once, and my mother knew I was down there. And we had gone to points in South Dakota, and *we had crossed the state line a number of times, in cars,* but on none of these occasions had men stopped at the state line and made us walk across. We did not ask to have these drinks I have been talking about.

"No one forced us to drink it, and we drank it voluntarily, and we got into the automobile voluntarily, and from O'Neill to Atkinson and from Atkinson to the Mellor ranch we went voluntarily. We did not observe the men doing their chores at the ranch. We stayed in the house and the men were outside part of the time, but I do not know what they were doing. I do not recall seeing a boat and trailer in the yard when we first got there.

"After two or three hours we left the ranch and started for Lynch by the way of these towns I have mentioned, and we drank some beer on the way to Lynch. We were not forced to drink it. When we got to Lynch, Lois and I went to the dance, and stayed there until it let out, after one o'clock. I do not know where Ford and Mellor went, but they did not go to the dance. When we left the dance we looked around for the car. We knew where it was going to be. Ford and Mellor were in the car and we got in. It was parked on Main Street.

"When we started for Lynch we went for the purpose of going home, but changed our minds and thought we would go to the ranch with these two men and go with them to Moran, Wyoming. We understood they were going to make this trip whether we

went or not. I stayed at the ranch two nights and Lois and I slept together. The second night I was awakened about morning, and found Mr. Mellor by my side, and I slapped him, and he got mad and left, and Mr. Ford left. When we got up in the morning they were gone. They did not tell us where they were going, but they came back about evening, and we left that night. There was a boat on a trailer behind the car, that they brought back with them, and that is the first time I had seen the boat and trailer.

"Around seven o'clock that evening, Ford, Mellor, Lois and I got in the car, and drove through to Moran, Wyoming. We went voluntarily. Mr. Mellor gave me $25.00 and Lois and I each bought a dress, paying $10.00 apiece for them. Neither one of us had any luggage with us. At Riverton, Wyoming, about the same amount of money was given to us, and it is not true that the sole amount of money given us was $2.00 at Riverton for us to get something to eat. Mr. Ford gave Lois some money at Riverton, but I don't remember how much it was.

"We arrived at Signal Mountain Lodge around six or seven o'clock in the evening, having only made short stops for something to eat or drink, and we were tired. We did not sleep in Cabin No. 15 that night, but slept in another cabin not far from it, which had been secured for us by a man by the name of 'Chuck,' whom we had met at Moran and who had followed us to Signal Mountain Lodge. H was a man about 21 or 22 years old, and was not in uniform. Lois and I slept in one bed in the cabin, and he slept in another, and when we got up around ten o'clock in the morning he was gone, and we didn't see him again.

"When we got up we went down to Cabin 15, where Ford and Mellor had stayed alone that night, as far as I know, but the second night and the third night we stayed there. *About the fifth night we stayed in a cabin with "Blackie,' a guide.* He took us after

dark and brought us to this cabin, and he slept in the same bed with my companion and I. He had intercourse with my girl companion, but not with me.

"We then went to Jackson, Wyoming, which is about 32 miles from Signal Mountain Lodge, and we walked part of the way, getting a ride with some men we did not know, but they were not servicemen. It is not true that after the second or third day at the Lodge, we were standing out in the roadway practically all of the time, talking to people and trying to get a ride out of there to go west. We spent most of our time out on the boat docks and out on the grounds.

"We went to Jackson and got jobs in a restaurant as waitresses. The name of it was the Log Cabin Bar, and there we had a talk with Mellor and Ford, and I heard my girl companion say to Ford,

'We have got a job waiting table, and we want to borrow five dollars.'

"I do not remember when we registered at the Golden Hotel early Sunday morning in August, 1944, if *we registered as Jeanie Krupicka and Sallie Krupicka of Lynch, Nebraska. We did use those assumed names at times, but not in registering at hotels, and we had used other assumed names.*

"From Jackson, Wyoming, we went to Los Angeles, California, and lived there together. I was picked up in Los Angeles and told to leave town, and I came back about seven weeks before Lois Milacek did. I was informed against after I returned by the authorities at Butte, Nebraska. I am now staying at the Girls' Industrial Home at Geneva, Nebraska, and I was sent there at the same time Miss Milacek was sent there, and I was brought here from Geneva by a matron to testify in this case.

"I returned to Lynch, Nebraska, the second week

in September, 1944. *I met Miss Pinkerman at O'Neill, but I never stayed at her house,* nor did Miss Milacek.

"I did not suggest, nor did Miss Milacek suggest, walking across the State line. Mr. Mellor never said in my presence to Miss Milacek, nor to me, that he would not take us girls to Wyoming, but would leave us at Harrison, Nebraska, and neither Miss Milacek nor I said, 'Why, we will get out and walk across the State Line; that is the way to do it.'

"We did meet at Signal Mountain Lodge the two men whom we accompanied to Jackson, Wyoming, and they were with us in Jackson for a few days, but we did not start west from Jackson with these two men.

"After the evening we spent with 'Chuck' in his cabin, we went down to Cabin 15, but did not go to the dining room. 'Chuck' was the fry cook at the Lodge, and we had met him in Moran.

"When we left Cabin No. 15 for good, we did not take all of our clothing, but left it there. I left a play suit, a pair of sandals, and Miss Milacek left a dress."

PETITIONER'S EVIDENCE

Direct Examination of Paul Sieber (R. 134 to 137)

"I live in Moran, Wyoming, in the summer time and Salt Lake City in the winter time. I am 49 years old. I am a chef by occupation and have followed that occupation for twenty years. In the month of August, 1944, I was chef at a vacationing place, Signal Mountain Lodge, two and a half miles south of Moran, Wyoming.

"I am acquainted with Ralph B. Mellor and Charles J. Ford, the men on trial here. I first became acquainted with them at Signal Mountain Lodge about August 11 to 13, 1944, the day after they checked in. They occupied Cabin No. 15, which is part of the buildings of Signal Mountain Lodge proper.

"I recall the occasion of meeting them. The second day after they arrived, Mr. Mellor came to the kitchen and asked if he could have breakfast with me, as it was past mealtime. That is the same man that is sitting over there, and he stated who he was, and I saw him in the kitchen practically every day after that and usually four or five times a day. I went to his cabin three or five times a week, or whenever I felt like it, some times in the afternoon, but usually after eight or nine o'clock at night.

"This cabin was a double cabin and can be rented for one party or two parties. There are two outside doors and a connecting door inside, and you can move from one room to the other without going outside. Every time I was in the cabin this door was open, and I was in both rooms of the cabin. I would stay a half to three-quarters of an hour or an hour on these social calls. I also saw Mr. Ford there, and he also came into the kitchen several times, and on the occasions I went to the cabin on these social calls I also saw Mr. Ford there, I believe on all occasions, and talked and visited with him.

"I never saw in or about the cabin or in the company of Mr. Mellor and Mr. Ford these two young ladies who were witnesses for the Government. Mr. Mellor first came to the kitchen the morning of the second day of his arrival at the lodge, and his visits to the kitchen were usually made between nine and ten o'clock in the morning. Besides visits with Mellor and Ford in the kitchen and in their cabin, I went with them in their car to Jackson and Moran several times, but these women never accompanied us.

"I only had a limited view of the grounds of the lodge, except to the rear of the kitchen, but when I was on the back step I had a view of the lodge grounds. The restaurant was on the ground floor of the one-story, log building, which had a lobby, and this building was located south of Cabin 15. There

were windows in the kitchen and a door which gave a view of Cabin 15, but from the back porch I could not see very far in that direction. I would say Cabin 15 was 100 yards from there. When I sat on the back step, I could look over towards Cabin 15, but I never saw any women around Cabin 15, nor did I ever see Mellor or Ford in company with any women.

"I was subpoenaed here as a witness, and I am not in any way related to the parties to this litigation. I worked at the lodge for the entire season of 1944."

Cross-Examination—By Mr. Donato (R. 136-137)

"I met Mr. Mellor on the second day of his arrival when he came to the kitchen for some coffee, but I do not recall that Ford came with him, and from the time I first met Mellor I began visiting at Cabin 15, and made probably twenty visits there from the time they arrived until they checked out. I think they arrived about the 12th but I could not say for sure, nor when they checked up, but I think they stayed two or three weeks. During the first week of their visit, I probably went to Cabin 15 five or six times. I was not overly friendly with them, but I drank liquor with them at their cabin. Our principal conversation was about firearms, Mr. Mellor having lots of fancy guns. The connecting door was always open when I was there, and the guns were in both rooms, and we would go back and forth and look at them. They were elk-hunting guns, large rifles. I furnished some of the liquor and Mr. Mellor furnished some; they did not furnish all of it. I probably purchased a pint of liquor every day, and when they did not have any liquor and wanted a drink, I gave it to them, but I never drank until evening.

"I also drank with them in the kitchen in the lodge.

"I never saw any girls in Cabin 15 when I visited there, but I do not know whether there were any

girls there at other times. I made one trip to Jackson with them that I can recall, and one trip to Moran, and these were just social trips. I did not drink with Mellor and Ford at Jackson, but at Moran I went with Mr. Ford alone, and I believe we had some beer. On the trip to Jackson I went early in the evening, but did not come back with them. I did not see Mr. Mellor and Mr. Ford do any gambling at Jackson. I could not see all of Cabin 15 from the back porch of the kitchen, and could not see who, if anyone, was in Cabin 15."

Direct Examination of Robert Robards (R. 137 to 141)

"I am 30 years old, married, and live at Jackson, Wyoming, this year. I was subpoenaed as a witness to come here. I am not related in any way to the parties connected with this litigation. I am a fishing guide by occupation, and during the month of August, 1944, I was employed at Signal Mountain Lodge, near Moran, Wyoming, which I think is a mile and a half south of Moran, towards Atkinson. The camp is approximately a quarter of a mile from one end of the camp to the other the long way, and probably 150 yards east and west. The central building is the office, lobby, dining room and kitchen, where they feed the guests that do not have kitchen facilities, and there are about fifty cabins or fifty units there. The main lodge is in the center of the camp, and a drive up to the front of the lodge, a drive to the north, or the right, for about 250 yards to the end of the camp; and on the west side of this road the cabins are numbered, commencing with No. 7 and then on up to the end of the road, which is about 250 yards. From west to east the cabins start at 7 and 8 and numbers on up on the left-hand side to 14, which is the last one on the left-hand side. There is only one Cabin 15, and that is north up this road about 200 yards. I do not think there is a view of each of these cabins from the central building, and hardly Cabin 15.

"I have been in Cabin 15 many times. As fishing guide I would be asked to drop over to the cabins and discuss the good fishing spots in the lake, what to use for bait, what depth to fish, and all, as it is quite a science in that part of the country, and those were part of my duties as head guide.

"My first employment there was in 1944, and I started there about the 7th of May, 1944, and worked there this year also. I am not related to Mr. Mellor or Mr. Ford or any of the parties to this lawsuit, and came here as a witness in response to a subpoena. I know both Mr. Mellor and Mr. Ford, but I had not met them prior to the time they came to the Lodge in 1944.

"I have a definite recollection of the time they first came there; it was late in the evening on the 12th of August to my recollection. I knew about their coming and I happened to be on the dock, when they came up and wanted to know where to put their boat in the lake. They brought their boat with them, but I never saw it launched, but I saw it at the dock a little later. What attracted my attention to it particularly, when I came in to the dock the next morning with the cabin cruiser, their boat was tied at the dock where I usually dock, and I could not get in until the boat was moved, but I did not know whom they were until the 13th of August, 1944, which was the day after they came up. Ford and Mellor were together, and I never saw any women with them, on that occasion. I was invited over to their cabin to discuss the fishing, and went over there that same night, the 13th, about nine o'clock in the evening.

"When I went to Cabin 15 on the night of the 13th Ford and Mellor were both there in the kitchen. I did not observe any women in the cabin. I do not know which side of the cabin I went in, but the door between the two rooms was not closed. I stayed there thirty to forty-five minutes probably, and during

that time I saw no women, and particularly not these two young women, nor did I see any women's clothing there. I went there the next night between nine-thirty and ten o'clock, and stayed possibly an hour. Mellor and Ford were both there, and the connecting door between the rooms was open, and we went back and forth between the two rooms.

"I saw one of the two girls here in the court room at Signal Mountain Lodge, being that one (indicating Miss Milacek). The first time I noticed her was on the dock, which is about 100 yards from the lodge, due west down over a little hill, and which would be more than a quarter of a mile from Cabin 15. That is the only time I remember of seeing her on the dock, and there were two young fellows with her. They were dressed partly in civilian clothes and partly in uniform, summer pants. I had not seen these young men before. I could not positively identify the other girl as having seen her.

"I saw Miss Milacek once or twice before that between the dock and the lodge, and there was some other woman with her, but I did not pay any attention. On a couple of occasions they were accompanied by two men, neither of whom was Ford or Mellor. I never saw Mellor or Ford with these two young women. I never saw them except on the occasions I have mentioned, and never saw them any other place than at the lodge grounds, and never talked with them.

'I' never saw Mellor and Ford fishing on the lake, but I saw them in the boat making a trip, and I think on only one occasion, and I think that was the second day they were there."

Cross-Examination (R. 140-141)

"I did not see Mellor and Ford on the day they arrived at the lake, and the first time I saw them their boat was at the dock, and it was the day after their arrival. The only conversation I had with them

was at the dock when they inquired of me 'how's fishing?', until I went to their cabin on the 13th of August, 1944, and I did not see any women there, but they could have been in some other cabin. I was in Cabin 15, when Mellor and Ford were there, about three times, and it might have been two times, but I know I was there one night and then the next night. The first night I did not drink any liquor with them but we just talked about fishing, but the second night I did drink with them. The inside door on all of these visits was wide open. I never saw any women there, nor any women's clothing, but there could have been some women's clothing in the closets.

"I am sure that I saw the young lady with the red coat (indicating Miss Milacek) there at the lake, but I am not sure about the other one with the glasses on (indicating Miss Hasenpflug), but I did see another young lady with Miss Milacek, but she was not wearing glasses.

"Signal Mountain Lodge is in the State of Wyoming, and I saw two young fellows on the dock with Miss Milacek and another young lady. They could have been together, and as far as I could tell the other young woman might have been Miss Hasenpflug. I do not know who the two young fellows were, and I could not say whether they were in conversation with the girls or not.

"I never saw the girls with Mr. Mellor or Mr. Ford but I did not see them during every minute of the day or night, and they could have been with these young women."

Direct Examination of Mrs. Nevada Evelyn Robards
(R. 141 to 151

"I reside now in Nevada. I am the wife of Robert Robards, who was just on the stand, and a subpoena was served on me by the U. S. Marshal at Jack-

son, Wyoming, to appear here as a witness and I am not in any way related to anyone connected with this case.

"Commencing the 7th of May, 1944, I was employed at Signal Mountain Lodge. I took care of the office and registered the guests, took money from the dining room, took care of the books and the general office work. Part of my duties were to assist in the taking of the registrations, together with Clarence Harris, one of the owners, but I registered people most of the time.

"The first time I saw Mr. Mellor and Mr. Ford, I think, was the 13th of August, 1944, the day after they arrived. I saw them coming back and forth from the office outside. Exhibits '1' and '2' are our registration cards. None of my handwriting appears on those two exhibits. I recognize the handwriting there as that of Mr. Harris. I worked there from May 7, 1944, until the lodge closed, shortly after Labor Day in 1944, but did not work there this season of 1945. I have again examined the handwriting on Exhibits '1' and '2', and recognize the handwriting on there as that of Mr. Harris. To my knowledge Mr. Harris has not been subpoenaed here as a witness; I have not seen Mr. Harris here in the Court room nor has he been about, but I had a telephone conversation with him last evening and located him at Signal Mountain Lodge near Moran, Wyoming.

"Mr. O'Sullivan: We offer in evidence Exhibits '1' and '2'.

"Mr. Donato: No objection.

"The Court: The exhibits are received."

These exhibits are at pages 143 to 145 of the Record and show that Cabin 15 was taken in the name of "Mellor & Charlie Ford" and "Mellor & Ford" and R. B. Mellor, O'Neill, Nebr., and not as Ralph Mellor and wife and

Charles Ford and wife, as claimed by the two complaining witnesses; that the rate was the usual cabin rate of $6.50 per day or $39.00 per week, and that these parties occupied Cabin 15 for 16 days, beginning with August 12th, 1944, and ending on August 27th, 1944.

"The rental stated on the exhibits is the usual rental for that cabin. The price is the same regardless of how many occupy it. I am familiar with the practice carried on at this lodge about registrations. They usually give you an idea of how long they are going to stay when they come in, and you fix a card for them and put the price of the cabin on the card, and indicate on the card whether there was an advance payment. Card No. 1 indicates that there was an advance payment, because it gives a weekly price instead of daily. It also gives the daily rate, but the weekly figure is on here also. That is the way the card is set up when it is rented for a definite period of time. If the parties stay beyond the rental period of one week, they do not register. We just fix Card No. 2, because the first card will only take care of one week, and if they stay longer, we make Card No. 2, write their names ourselves on that card, and attach it to Card No. 1. That was the procedure when I was there.

"I was not on duty when Mr. Mellor and Mr. Ford registered, but they came into the office about the 13th of August. In order to get into the lobby or dining room or any part of the lodge building, you have to pass by the office, which is right by the door. I saw them come in but did not see anyone with them, nor did I see where they went. I never saw them on any other occasion, except when they would pass in and out in front of the office. I was never down to their cabin with my husband. I saw the young lady in the red coat at Signal Mountain Lodge. She stands out in my memory. But there were two of them together. One of the office windows looks down towards the

dock, and I saw them on the dock and on the front porch of the lodge building. There is a large front porch on the cabin the full length of the building, and a couple of times they sat on the front porch of the lodge, but I never saw them in company with Ford or Mellor. I did notice them on the front porch with a couple of young fellows, and one of the men had part of a uniform on. This was on the afternoon of the second day of their arrival. That is the only time I happened to notice them, and they stayed there possibly thirty minutes. Then, I think it was the same day, I saw them on the dock, probably on the 13th or 14th. I do not know with whom they were, for there were a lot of people on the dock at that time. The last time I saw them was the evening of that same day, when I saw them drive out with these two fellows who had been on the front porch with them. The men had a coupe, and it was about six or seven o'clock in the evening when they left. It was the evening of the second day after their arrival. The car left from the front porch of the lodge, and I never saw them after that, and I never saw that car again."

Cross-Examination

"I first saw Mellor and Ford on the 13th of August, 1944, and at that time no one was with them, as far as I know. I saw them pass the office at that time, on the inside of the building. There are always a number of people passing in and out, but I did not notice anyone with Mr. Mellor and Mr. Ford, and there were no other people passing in at that time, just Mr. Mellor and Mr. Ford alone.

"I recall seeing Lois Milacek, the young lady dressed in the red coat, at Signal Mountain Lodge, in Wyoming, on the 13th and 14th of August, 1944, and there was another young lady with her, but to my knowledge she was not wearing glasses.

"I saw the two young ladies together, one of whom was Miss Milacek, sitting on the front porch of

the lodge, and I saw them on the dock while I was in the office, which is about 100 yards from the dock, and there were other people on the dock at that time, and I could not say definitely whether there was anyone with these young ladies or not.

"The two young men whom I saw on the porch with these young ladies were rather young and both blond. One was dressed partly in a uniform; that is, his trousers looked like they might have been a part of a uniform. They were of medium height, would weigh about 130 pounds or somewhere in there, and I would say they were about 5:8 or 5:9 feet tall. They were both about the same size. One had on just a shirt pants, and the other had on 'army colored pants' and no coat. I think the other man had on a pair of overalls.

"I was never in Cabin 15 during the week of August 12th. I do not know whether Lois Milacek or the other girl were ever in company with Mellor and Ford at the lodge, but I never saw them with these men, and I do not know whether these two girls stayed in Cabin 15 with Mellor and Ford."

Direct Examination of Charles S. Horel (R. 151 to 153)

"I live at Worland, Wyoming, but my summer residence is at Moran. I am 64 years old, married, and a Doctor of Dental Surgery, but have been retired since 1915. I went to Signal Mountain Lodge on the 11th day of July, 1944, and resided on the grounds of the lodge, in a trailer of my own, and remained there continuously until October 16, 1944, with the exception of one week the latter part of August.

"My trailer was parked across the driveway and approximately 100 feet south of Cabin 15. I am familiar with the location of Cabin 15, having visited that camp for approximately twenty years. I surveyed the camp site originally, and am familiar with the location of the buildings.

"On August 14, 1944, I met Ralph Mellor and Charles Ford. August 12th was my birthday and I was taken quite ill, and did not go out on the lake on August 12th or 13th. I remained in the trailer or about the grounds during that time. I had known and met Messrs. Mellor and Ford several years before at the camp, and the night before August 14th we had a storm at the camp, and I went down to the dock to see how the boats were doing. I noticed a boat bottom side up in the bottom of the lake, tied to the dock. I inquired whose boat it was, and was told that it belonged to someone who had come in the night before and tied it up. I then pulled the boat out as far as I could and tied it up. Afterwards, late that afternoon, I met Mellor and Ford on the dock. There were no women with them at that time.

"I have seen these two young ladies who testified in this case, and who have been sitting in the court room. I think it was on August 15th that Mr. Mellor came to my trailer, but I never went over to the cabin where he was staying, but from my trailer I had a view of the cabin where he was staying. Cabin 15 faces west; I was south and east. I had a view to the south end and the rear of their cabin. I saw Mellor approximately eight times during the period of ten days after August 14th, and I saw Mr. Ford during that time about six times, but on these occasions I never saw the young women with them.

"The first time I saw these young women on the grounds of the Signal Lodge was in the forenoon of August 15th, out in the driveway behind Cabin 15. One was sitting on the railing and the other one was standing. I observed them there for about thirty minutes, and then they went down the driveway towards the office or dock. They came from behind Cabin 15. The next time I saw them was the next day along towards evening. They were going past this trailer down the driveway towards the office or dock, and there were two men with them, but not

Mellor or Ford. I paid no particular attention to them, but one as wearing khaki trousers and a shirt and no coat, and the other wore dark-colored trousers and, I believe, a coat. They were of medium height. I watched them going down the driveway for about 100 feet, and I never saw the two girls after that, nor did I ever see the men they were with after that, and I do not know their names.

"During the period of time that I observed the girls on the lodge property, I saw Mellor and Ford drive past my trailer several times. That was both before and after I saw the girls there. I stayed close to my trailer for about twelve days after August 12th when I became ill, but I was around the grounds each day. I went to town on the 18th to see a doctor, but that was the only time I absented myself from the lodge property."

Cross-Examination (R. 153)

"I could not see the front of Cabin 15 from my trailer. I saw Mr. Mellor approximately eight times during the ten days, beginning with the 12th of August. I saw the two girls near Cabin 15 on August 15th in the forenoon. They came alone from behind Cabin 15, and two days later I saw them near Cabin 15."

Redirect Examination (R. 153)

"I came here in response to a subpoena, and am not related in any way to any of the parties connected with this case."

Direct Examination of H. J. Templeton (R. 153-156)

"I live at Lusk, Wyoming, and have lived there twenty-five years. I am 52 years old, married and have a family. My wife and I were subpoenaed here as witnesses in this case, and we are here pursuant to that subpoena to testify in this case. I am not related in any way to any of the parties in this case.

"During the month of August, 1944, my wife and I were guests at Signal Mountain Lodge, and occupied a cabin there, Number 14, which was about forty feet east of Cabin 15. I am a retired merchant, having been in the general merchandise and grocery line at Lusk, Crawford and Lance Creek, Wyoming. I have not been able to definitely fix the time we went to Signal Mountain Lodge, but it was the third week in August. I have endeavored to make a check.

"Q. Well, can you with any degree of accuracy fix the date that you came to Signal Mountain Lodge?

"A. I would say the 18th.

"We moved in Cabin 14 immediately and continued to reside at that cabin until the 10th or 12th of September. During this time we became acquainted with Mr. Mellor and Mr. Ford, the occupants of Cabin 15. I wanted to see a home-made ice box they had, and it was on the porch of their cabin. I was in their cabin once, and stayed there about ten minutes. I was entirely through the cabin, and at that time there were no women in the cabin. I never observed or heard any talk or noises in Cabin 15. I never saw Mellor and Ford with any women while they were there. I saw them go and come in their car, but did not see them go fishing. I saw them daily, and usually several times during the day going or coming, all the time they were there. I never saw these two young women who were on the witness stand, nor did I see them with Mellor or Ford. During the time I was there, I was all over the grounds of the lodge.

"I saw Mellor and Ford at Jackson, Wyoming, but the only thing I ever observed them doing around the cabin was playing a music box out on the porch. I could see the front of the cabin, No. 15, from our cabin. The first ten days we were there, we were in our cabin practically all of the time or around there. I did not even go to the dock the first ten days."

Cross-Examination (R. 155)

"Just prior to going to Signal Mountain Lodge, Mrs. Templeton had been visiting east of Chicago, but I was not with her, and on her return from her eastern visit she went to Lusk, Wyoming, our home. And the next morning after she came home, we went to Signal Mountain Lodge, to the best of my recollection on August 18, 1944."

Direct Examination of Mrs. H. J. Templeton

(R. 156-157)

"I am the wife of H. J. Templeton, who just left the stand. I was at Signal Mountain Lodge in August, 1944, arriving there about the 18th of August. We occupied Cabin No. 14. Cabin No. 15 was to our right and back; it sets back about forty feet. My husband and I remained there until after the hunting season, around the tenth of September, and were there continuously from the time we first arrived. There was no one else in Cabin 14 with us. The first day we were there we became acquainted with the occupants of Cabin 15, Mr. Mellor and Mr. Ford. It was some time in the afternoon. I went to their cabin with my husband, and we remained there not over ten or fifteen minutes. After that we saw Mr. Mellor and Mr. Ford several times each day; we parked our cars in the same driveway, and we were out there quite a lot and talked with them, and they ran errands for me. My husband was quite ill for the first ten days we were there, and we saw these men frequently. I never saw them with any women, and I never heard the voices of any women in their cabin, and never saw any woman go in there. I never saw these girls who testified in this case around the lodge grounds or around Cabin 15.

"I had occasion to go to the main lodge dining room and to walk around the lodge grounds, but never

saw these girls around there at all, and never saw Mellor and Ford with any women.

"I came here in response to a subpoena served on me at Lusk, Wyoming, by a U. S. Deputy Marshal, and I am not in any way related to anyone connected with this case."

Cross-Examination (R. 157)

"To the best of my recollection we arrived at Signal Mountain Lodge on August 18, 1944, about the middle of the afternoon, and we were not at Signal Mountain Lodge at any time between August 12th and August 18th, 1944."

Redirect Examination (R. 157)

"In going from Cabin 15 to the main building, or out to the highway leading away from Signal Mountain Lodge, persons or cars would have to pass Cabin 14. In order to get to Cabin 15 you would have to pass Cabin 14. The road was directly behind the cabins."

Testimony of Defendant Charles J. Ford

The defendant, Charles J. Ford, took the witness stand in his own defense (T. of R. 157 to 188) and testified that he worked as a ranch hand for the defendant, Ralph Mellor, from July 12th, 1944, to August 11th, 1944, when they started for Signal Mountain Lodge near Moran, Wyoming; that they had made plans to go on this vacation trip about three weeks previous to August 8th, 1944, when they saw these two young women on the road north of O'Neill, Nebraska, and gave them a ride; that after the car turned west at the fork of the road Miss Hasenpflug said that they wanted to go to Lynch, Nebraska; that the two young women, however, went to Atkinson,

Nebraska, and then to the ranch-house of Mellor's, and then to Lynch, Nebraska; that later that night one of the young women came back to the ranch-house with them, and the other was brought back by Mellor the next day; that they did not drink with these two women or have or attempt to have any illicit relations with them at the ranch-house or anywhere else, either on the road or at Signal Mountain Lodge; that the young women found out from their conversation with them that they were going to Wyoming and wanted to go along as they said they were going to California to visit Miss Hasenpflug's sister; that Mellor said that Ford and himself were planning a trip to Jackson, Wyoming, and the young women stated that they would like to ride that far with them, and Mellor said that they could; that Mellor said that they could not take them across the State Line, but they could go as far as Harrison, Nebraska, whereupon both Miss Hasenpflug and Miss Milacek said that they would walk across the State Line, and Mellor said that was all right; that the four parties went by automobile westward on the evening of August 11th, 1944, starting from the ranch-house, and when the car was west of Harrison, Nebraska, at the State Line, it was stopped before they had reached the State Line, and Mellor said to the young woman, "We are at the State Line," and they immediately got out of the car and walked across the State Line for about a distance of 50 feet, and then they got back in the car; that when they arrived at Signal Mountain Lodge, Mellor registered himself and Ford in Cabin 15; that neither Mellor nor himself ever stated to these two young women that they were registered in Cabin 15 as husbands and wives; that the two young women, as far as Mellor and Ford knew, stayed in one side of this double cabin with the center door locked that first night, and at breakfast time the next

morning they were outside and Mellor asked them to have breakfast; that in the dining room they acted silly and laughed and carried on, and Mellor and himself walked out before finishing breakfast and later Mellor admonished these two young women for their conduct and that was the last Ford or Mellor ever saw of them at the camp, but that they saw these two young women later at Jackson, Wyoming, and he, Ford, loaned them $5.00; that these young women had also received some small sums of money from Mellor and himself at O'Neill, Nebraska, and enroute.

Testimony of Defendant Ralph B. Mellor

The other defendant, Ralph B. Mellor, also testified in his own behalf and his evidence was similar to that of the defendant, Ford (T. of R. 188 to 214). He, Mellor, stated that he told these two young women that he and Ford were going to Wyoming, after they had stated that they were going to California (T. of R. 190 and 194); that these two young women suggested that they would walk across the State Line between Nebraska and Wyoming (T. of R. 194); that they did walk across the State Line (T. of R. 197-198); that the trip to Signal Mountain Lodge had been planned since the previous July 15th, and had been an annual trip of his since the year 1929; that he had previously stayed at a number of lodges near Moran, Wyoming, which he named; that the arrangements for this trip had been practically completed and he would have gone with Ford on the trip whether he met these young women or not (T. of R. 197).

At the conclusion of the Government's case in chief, and also at the conclusion of all of the evidence in the case and after both sides had rested their respective cases, the defendant made a Motion for Directed Verdict of

Acquittal, and same was overruled by the Court (T. of R. 131 to 134 and T. of R. 214 to 216).

This Motion followed the pattern of the Motion to Quash and the Special Demurrer and urged the additional grounds that the changing of the disjunctive "or" in the law to the conjunctive "and" in the Indictment was contrary to the laws and Constitution of the United States, both of which contemplated the statutory Congressional enactments of criminal laws and not legislation by the District Attorney or the Courts; that the evidence produced did not amount to proof of the guilt of the defendant beyond a reasonable doubt; that there was a fatal variance between the Government's pleading and proof in that the women in question were not transported from Nebraska to Wyoming, but at their own suggestion or that of the defendant, they voluntarily walked across the State Line from Nebraska to Wyoming, thus causing a break or hiatus in the alleged transportation, because the Indictment having fixed the starting place to have been Holt County, Nebraska, and the terminus of the journey to have been Moran, Wyoming, whereas the undisputed proof showed that the actual terminus was Signal Mountain Lodge, some miles beyond Moran, Wyoming; and that the Government's evidence was not of such probative force as would amount to proof of defendant's guilt by evidence beyond a reasonable doubt, as required by law.

At the conclusion of all of the evidence the case was argued to the jury by respective counsel and certain objections and exceptions were taken by defendant's counsel to portions of the argument of Assistant United States Attorney A. Z. Donato, which were not correctly ruled upon by the Court. Defendant's counsel contended that this argument of Mr. Donato, which he charged was

improper, amounted to such misconduct of counsel as should have warranted the Court in entering an order sustaining defendant's Motion for a Mistrial (T. of R. 217 to 220).

Eight instructions were requested by the defendant and were tendered to the Court in writing prior to the time the case was argued, and the Court having refused to give any of same, exceptions to such refusals were taken by counsel for the defendant, and were allowed by the Court (T. of R. 38 to 42 and 237).

We contend that all of these instructions were proper and should have been given by the Court, as they not only presented the defendant's theory of the case but also correctly advised the jury as to certain phases of the law of the case.

The instructions given by the Court are to be found in the printed Transcript of the Record (T. of R. 221 to 236).

Counsel for the defendant took certain exceptions to portions of the Court's instructions, which the Court overruled and allowed the defendant his exceptions. It is our contention that these exceptions were meritorious and we believe that the Court's findings in reference to same were erroneous (T. of R. 237 to 239).

The case was submitted to the jury and they returned a verdict of guilty (T. of R. 42 to 43).

Thereafter the defendant, within the time provided for by law, filed a Motion for a New Trial (T. of R. 43 to 53).

The Motion for a New Trial was argued orally and submitted on written briefs and was overruled by the Trial Court, and a written opinion was filed in the case (T. of R. 70 to 86).

Thereafter the defendant was sentenced to imprisonment for a period of three years (T. of R. 92 to 94) and this appeal was perfected to this Court.

BASIS OF JURISDICTION

The jurisdiction of this Court is invoked under Section 240a of the Judicial Code, as amended by the Act of February 13th, 1925 (U. S. C. A., Title 28, Section 347).

QUESTIONS PRESENTED

1. Did the Court err in overruling the defendant's respective Motion for Bill of Particulars, Motion to Quash, Special Demurrer and Motion for Directed Verdicts of Acquittal, and each of them?

2. Is the Indictment as drawn so vague, indefinite and uncertain as to be violative of the defendant's rights under the 5th Amendment to the United States Constitution, guaranteeing to him due process of law, and the 6th Amendment to the United States Constitution, establishing his right to be informed of the "Nature and cause of the accusation made against him, and also by the changing of the word "or" to the word "and" did the District Attorney usurp the exclusive power of Congress to legislate, as provided for in Section 1, of Article 1, of the United States Constitution?

3. Is the Indictment duplicitous and does it contain a number of offenses in one count, in that it charges the

transportation of two women by two men in interstate commerce in violation of the Anti-White Slave Act, and also combines separate and distinct offenses in one count?

4. Where the errors claimed by the defendant, and duly excepted to, which errors were in the giving of portions of the final instructions to the Jury by the Court on its own motion meritorious?

5. Was the action of the trial Court, in the final instructions to the Jury, in deleting certain portions of the Indictment as surplusage tantamount to an amendment thereof and erroneous?

6. Was it error on the part of the trial Court to refuse to give Instructions 1, 2, 3, 4, 5, 6, 7 and 8, and each of them, requested by the defendant?

7. Was the evidence insufficient to warrant the submission of the case to the Jury-

8. Was there proper or sufficient proof offered by the Government in support of the allegation that the intent and purpose of the alleged interstate transportation was for the purpose of prostitution, debauchery, or other immoral purposes, etc.?

9. Was there an utter failure of proof to show that the dominant and "efficient purpose prompting and impelling the defendant" to make the alleged trip by automobile, with the two women in question, from Mellor's Holt County ranch to Signal Mountain Lodge, near Moran, Wyoming, for any of the unlawful purposes and intents alleged in the Indictment, or on the contrary did the evidence show conclusively that if there was any such illegal purposes, intents and acts as was alleged in the

Indictment, assuming that the transportation was completed from one State to another as charged in the Indictment, that such purposes, intent and acts were mere incidents of defendant's vacation trip, and not the dominant, "efficient purpose prompting and impelling the defendant" to transport the said two women in interstate commerce.

10. Was the Assistant United States Attorney guilty of misconduct and did the Court err in refusing to grant defendant a mistrial by reason of said claimed misconduct?

11. Was there a fatal variance between the pleading and the proof, in that it is alleged in the Indictment that the transportation from the Mellor ranch in Holt County, Nebraska, to Moran, Wyoming, was made by the defendant, when the evidence conclusively proves that there was a break, or hiatus, in said transportation in that the two women named were not transported across any State Line by the defendant, but said women by their efforts in walking, completed their own transportation from one State to another, and the only evidence of any transportation was from the ranch house in Holt County, Nebraska, to the Nebraska State Line adjoining Wyoming, and from a point inside the State of Wyoming to Signal Mountain Lodge, beyond and near Moran, Wyoming?

12. When the Indictment set forth a definite starting point, and a specific terminus, to-wit, Moran, Wyoming, did the Government's case fail when there was an utter failure to prove the unlawful intent and purpose alleged in the Indictment by any direct circumstantial evidence prior to the alleged terminus, even though there was evi-

dence on the part of the women whom it is claimed were transported, that immoral acts occurred at Signal Mountain Lodge, about 2½ miles beyond Moran, Wyoming?

WHEREFORE, your petitioner prays that Writ of Certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the Eighth Circuit, commanding said Court to certify, and send to this Court, a full and complete Transcript of the Record and of the proceedings of the said Circuit Court had in the case numbered and entitled on its Docket No. 13349, Criminal, *Ralph B. Mellor vs. United States of America,* to the end that this cause may be reviewed and determined by this Court, as provided for by the Statutes of the United States, and that the Judgment herein of said Circuit Court may be stayed and petitioner released on bail during the pendency of this appeal, and that the Judgment herein may be reversed by this Court, and for such other and further relief as to this Court may seem proper.

EUGENE D. O'SULLIVAN and
HUGH J. BOYLE,
Attorneys for Petitioner.

IN THE

Supreme Court of the United States

—o—o—

October Term, 1946

—o—o—

No.————

—o—o—

RALPH B. MELLOR,

Petitioner.

vs.

UNITED STATES OF AMERICA,

Respondent.

—o—o—

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

—o—o—

THE OPINIONS OF THE LOWER COURTS

The opinion of the Circuit Court of Appeals for the Eighth Circuit has not, as yet, been reported in the Advance Sheets. The decision in the case, however, was rendered on April 10th, 1947, and same is to be found in the printed Record at pages 242 to 256, inclusive.

A Memorandum Opinion was rendered by the Trial Court and same is to be found in the printed Record at pages 70 to 86, inclusive.

JURISDICTION

As aforestated, the opinion of the Circuit Court was rendered on April 10th, 1947 (R. 242 to 256, incl.), and no Petition for a Rehearing was filed. Thereafter a Motion to Stay the Mandate was filed on April 23rd, 1947 (R. 260-261), and an Order Staying the Mandate for a period of 30 days (R. 261) was made by the Circuit Court on April 25th, 1947.

The Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13th, 1925, Section 347, Title 28, U. S. C. A.

STATEMENT OF THE CASE

A most complete statement of the case having been made in the Petition for the Writ of Certiorari, it would serve no useful purpose to restate the facts in the case here. The Court's attention is therefore directed to pages 2 to 46 of said Petition.

SPECIFICATIONS OF ERROR

1. Because of the overruling of the defendant's respective Motion for Bill of Particulars, Motion to Quash, Special Demurrer and Motion for Directed Verdict of Acquittal, and each of them.

2. Because the indictment as drawn is so vague, indefinite and uncertain as to be violative of the defendant's rights under the 5th Amendment to the United States Constitution, guaranteeing to him due process of law, and the 6th Amendment to the United States Constitution, establishing his right to be informed of the "Nature and cause of the accusation made against him, and also by the

changing of the word "or" to the word "and" the District Attorney usurped the exclusive power of Congress to legislate, as provided for in Section 1, of Article 1, of the United States Constitution.

3. Because the Indictment was duplicitous and contained a number of offenses in one count in that it charged the transportation of two women by two men in interstate commerce in violation of the Anti-White Slave Act, and also combined separate and distinct offenses in one count.

4. Because or errors claimed by the defendant and duly excepted to, which errors were in the giving of portions of the final instructions to the Jury by the Court on its own motion.

5. Because the action of the Court, in the final instructions to the Jury, in deleting certain portions of the Indictment as surplusage amounted to an amendment thereof and was erroneous.

6. Because the Court erred in refusing to give Instructions 1, 2, 3, 4, 5, 6, 7 and 8, and each of them, requested by the defendant.

7. Because the evidence was insufficient to warrant the submission of the case to the Jury.

8. Because no proper or sufficient proof was offered by the Government in support of the allegation that the intent and purpose of the alleged interstate transportation was for the purpose of prostitution, debauchery, or other immoral purposes, etc.

9. Because there was an utter failure of proof to show that the dominant and "efficient purpose prompting

and impelling the defendant" to make the alleged trip by automobile, with the two women in question, from Mellor's Holt County ranch to Signal Mountain Lodge, near Moran, Wyoming, was for any of the unlawful purposes and intents alleged in the Indictment, but on the contrary the evidence shows conclusively that if there were any such illegal purposes, intents and acts as were alleged in the Indictment, assuming that the transportation was completed from one State to another as charged in the Indictment, such purposes, intent and acts were mere incidents to defendant's vacation trip, and not the dominant, "efficient purpose prompting and impelling the defendant" to transport the said two women in interstate commerce.

10. Because of the misconduct of the Assistant United States Attorney and the refusal of the Court to grant defendants a mistrial by reason of said claimed misconduct.

11. Because there was a fatal variance between the pleading and the proof in that it is alleged in the Indictment that the transportation from the Mellor ranch in Holt County, Nebraska, to Moran, Wyoming, was made by the defendant, when the evidence conclusively proves that there was a break, or hiatus, in said transportation in that the two women named were not transported across any State Line by the defendant, but by their efforts in walking completed their own transportation from one State to another, and the only evidence of any transportation was from the ranch home in Holt County, Nebraska, to the Nebraska State Line adjoining Wyoming, and from a point inside the State of Wyoming to Signal Mountain Lodge, beyond and near Moran, Wyoming.

12. Because when the Indictment set forth a definite starting point and a specific terminus, to-wit, Moran, Wyo-

ming, the Government's case failed when there was an utter failure to prove the unlawful intent and purpose alleged by any direct or circumstantial evidence prior to the alleged terminus, and the fact that there was evidence on the part of the girls that immoral acts occurred at Signal Mountain Lodge, about 2½ miles beyond Moran, Wyoming, availed nothing.

ARGUMENT

Relating to Specification of Error No. 1

The following points are urged under this heading:

Although it is within the sound legal discretion of a Court to overrule a Motion For a Bill of Particulars, yet that discretion may be so abused as to warrant the reversal of a case.

The improper overruling of one or a series of preliminary pleadings, such as a Motion For a Bill of Particulars, a Motion to Quash, a Special Demurrer, and a Motion For a Directed Verdict of Dismissal, based upon constitutional and other legal grounds, may be sufficient reason to warrant a reversal of the case.

A reading of the Motion For Bills of Particulars (T. of R. 9 to 13), Motion to Quash (T. of R. 13 to 15), Special Demurrer (T. of R. 15 to 17), and the Motion For Directed Verdict of Acquittal (T. of R. 131 to 134, 214 to 216), as well as the Motion For a New Trial (T. of R. 43 to 53), will disclose that these pleadings of defendant were proper in form and that not only were the legal questions which are involved in this appeal specifically called to the attention of the Trial Court at every proper stage of the proceedings, but also that the questions now

presented to this Court were properly preserved for the purposes of a review of same.

A mere reading of these pleadings, we feel, will convince the Court that they should have been sustained in part and that no further argument is necessary here in reference to same.

Relating to Specifications of Error Nos. 2 and 3

The following points are urged under this heading:

"An indictment for a statutory offense, which merely followed the language of the Statute, is not good, even if it contains every ingredient of the statutory definition, unless it charges the offense with precision and certainty, and leaves no room for doubt of the exact offense intended to be charged, and unless, also, the record shows with accuracy the exact offense presently charged, as a protection against double jeopardy."

Jarl vs. United States, 19 F. (2d) 891.

Gaughan vs. United States, 19 F. (2d) 897.

Corcoran vs. United States, 19 F. (2d) 901.

Armour Packing Co. vs. United States, 209 U. S. 56, 28 S. Ct. 428, 52 L. ed. 681.

A vague, indefinite and uncertain indictment is violative of a defendant's rights under the 5th and 6th Amendments to the United States Constitution.

5th Amendment to United States Constitution.

6th Amendment to United States Constitution.

The changing of the word "or" in the language of a statute to the word "and" in an Indictment by a District

Attorney is an illegal encroachment upon Section 1, of Article 1, of the United States Constitution, which confers upon Congress the sole and only power to legislate, among other things, with reference to statutory offenses.

Section 1, of Article 1, of United States Constitution.

An Indictment which contains in one count more than one charge is bad for duplicity.

Congress by a specific statute has provided for the inclusion in one Indictment, in separate counts, distinct and separate offenses for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be joined properly, and it is legally improper to combine any or all of these separate offenses in one count of an Indictment.

18 U. S. C. A. 557.

It is legally improper, and reversible error, for the Government to join two defendants together in a one-count Indictment, and charge them jointly with the substantive offenses of violating all of the provisions of 18 U. S. C. A. 397 and 398, of the United States Anti-White Slave Act, in the unlawful transportation of two named women.

Gillette vs. U. S. (8th Cir.), 236 Fed. 215.

Roark vs. U. S. (8th Cir.), 17 F. (2d) 570.

Gillenwaters vs. Bittle, Warden (8th Cir.), 18 F. (2d) 206.

Lucas vs. U. S., 104 F. (2d) 235, 70 App. D. C. 92.

U. S. vs. Hunt and Henderson, 120 F. (2d) 592.

Hill vs. U. S. (8th Cir.), 150 F. (2d) 760.

U. S. vs. St. Clair, 62 Fed. Supp. 795.

In the cases of *Jarl vs. United States,* 19 F. (2d) 891, and *Gaughan vs. United States,* 19 F. (2d) 897, *Corcoran vs. United States,* 19 F. (2d) 901, and other cases, the Eighth Circuit has held that:

* * * * *

"An indictment for a statutory offense, which merely follows the language of the statute is not good, even if it contains every ingredient of the statutory definition, unless it charges the offense with precision and certainty, and leaves no room for doubt of the exact offense intended to be charged, and unless, also, the record shows with accuracy the exact offense presently charged, as a protection against double jeopardy."

* * * * *

In the opinion, at page 893, the Court said:

* * * * *

"In Armour Packing Co. v. United States, 209 U. S. 56, 83, 28 S. Ct. 428, 436 (52 L. Ed. 681), it is said: 'This court has frequently had occasion to hold that the accused is entitled to know the nature and cause of the accusation against him, and that a charge must be sufficiently definite to enable him to make his defense and avail himself of the record of conviction or acquittal for his protection against further prosecutions.'"

* * * * *

The law upon which this prosecution is ground does not use the conjunctive AND but the disjunctive OR in reciting these separate, distinct and inconsistent ways or means of committing the offenses, but the pleader does not use the disjunctive OR, but instead uses the conjunctive AND. To draft the Indictment in the way and manner in which it is drawn and put the defendants on trial on same is contrary to certain provisions of the Constitution of the United States, and Amendments thereto, and to the Laws of the United States, particularly United States Con-

stitutional Amendments 5 and 6, and that portion of Section 1 of Article 1 of the said Constitution, which exclusively empowers the Congress of the United States to make all laws necessary and proper to carry into execution all of the Powers of Government, and to create and define criminal offenses and to provide punishment therefor. In the Circuit Court opinion, it is stated: "Appellants do not point out, nor are we able to discern, how the power of Congress is in any manner affected."

Obviously, the criminal statute which Congress passed was not in the same language as the language invoked by the United States Attorney. Congress said "or", thereby intending to denounce a series of offenses, whereas the United States Attorney, instead of taking that Congressional enactment verbatim, arbitrarily changes every "or" to an "and", and thus couples up the various offenses denounced, and making one count and one offense out of the whole statute. If the word "or" may be changed to the word "and" in a criminal statute, may not any other word be changed likewise into some other word? Where will the line of demarcation be? Where will you draw the line? It would be better to draw the line on changing "or" to "and" and avoid District Attorney legislation.

By alleging disjunctives in the law as conjunctives in the Indictment it amounts to an amendment of the law by the United States Attorney and violates the right of the defendant to have the charge against him made with specific definiteness, clarity and certainty, and also denies him the right to have each charge made separately, and not all of the charges under the law made against him en masse.

It is not stated specifically in the Indictment whether the charge was based on the theory that the defendant *did*

trans did cause to be transported, did assist in obtain-
ing t ortation for, or in transporting or whether the
inten purpose was to *induce, entice or compel* the wo-
men transported in interstate commerce, all of which
mean rent things.

ıtent and purpose are necessary and essential
elem f the offenses created by Section 398 of Title 18,
U. S A., upon which this Indictment is predicated.
Ther o sufficient or proper allegation in the Indict-
ment ing any intent or specific intent but merely a
blan arge of a general and unspecified intent which
migh ne of the three but probably not all of the in-
tents ed, and this also amounts to a violation of the
defe s right to be accorded due process of law, as
guar by the 5th Amendment to the United States
Con n, and is also violative of that portion of the
6th lment to the United States Constitution which,
in s as applicable, provides that the accused shall
have ight to be informed of the nature and cause of
the tion made against him.

ndictment fails to plead sufficient facts so as to
brinnatters alleged within the law and to inform this
defe with sufficient particularity and certainty as to
the e charge attempted to be made against him and
failsclose to the defendant the necessary and proper
offe lative to the claimed commission of the alleged
offe arged in each of said counts and contains mere
cons and does not plead facts, and also the allega-
tion vague, indefinite and uncertain and do not state
suff facts or circumstances tending to identify the
par manner in which the offense was committed.

In *U. S. vs. Hunt* (C. C. A., Ill., 1941), 120 F. (2d) 592, it is stated:

> "An indictment charging two defendants in six counts of violating section 397, et seq., of this title, in causing two girls to be transported from one state to another for purposes of prostitution, which named date of trip, the girls involved, the mode of transportation, and object of transportation, using statutory terms, was sufficient, as against contention that indictment was too vague."

The Indictment in the instant case does not measure up to the standard of *U. S. vs. Hunt*, supra.

A perusal of the Indictment discloses that it is not sufficiently informative, specific, definite and certain as to satisfy constitutional requirements under the applicable portions of the 5th and 6th Amendments to the Constitution of the United States, there being an utter failure on the part of the pleader to allege all of the essential facts, such as *the way, means or manner by which the alleged interstate transportation was accomplished* or planned or contemplated, and there is also an utter failure on the part of the pleader to specifically allege whether or not said defendant transported or caused to be transported in interstate commerce or aided and assisted in obtaining transportation or transporting the women in question. The failure to allege the specific facts and circumstances identifying or tending to identify the particular offenses attempted to be charged renders said Indictment a nullity. Any law or rule of law which authorizes, or pretends to authorize, an Indictment such as was had in this case should be held to be unconstitutional, null and void for the reasons herein assigned.

We are familiar with the rule of law which has been applied in numerous cases, and that is,—that an Indictment can follow the language of the statute and may contain a number of ways in which an offense could be committed, if the different ways are connected by the conjunctive "and" and not the disjunctive "or", but it is our contention that such a course of procedure can be followed legally only when there is no inconsistency between any of the various ways it is alleged that the defendant employed to commit the offense. An Indictment of murder could not charge in one count that the defendant shot, poisoned, choked, kicked, beat, speared, drowned and gassed the victim, thereby causing the victim to die, and take "pot luck" on which would, upon the trial, fit the case from the standpoint of proof. Such pleading would never be proper for the reason that it would not be in the language of the statute and there would be a lack of directness. Such pleadings would not only confuse a defendant, but would also confuse a jury if the case ever went to the jury. The better reasoning suggests that every charge should be made with particularity, definiteness and directness and be such as to advise the defendant of the nature of the accusation. The charge in the instant case cannot be held to satisfy such requirements.

Section 557 of Title 18 states that:

> "When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated."

The use of the word "may" in connection with permitting a joining of several such counts in one indictment should be construed to be mandatory and not directory, because if the pleader had to get legislative authority to put these counts in one Indictment, then certainly he has no statutory or other authority to lump a number of counts together, some of them inconsistent, in one all-embracing count.

In *Roark vs. U. S.* (C. C. A., Colo., 1927), 17 F. (2d) 570, 51 A. L. R. 8[illegible], it is stated:

> "Distinct violations growing out of same transaction are separate offenses. Transporting woman and inducing her to be transported for immoral purpose, though single transaction, constitute separate offenses."

In a civil case no pleader would contend that he did not have to state and number his various causes of action or to be consistent in his allegations. He would not have the audacity to put all of his separate claims, both consistent and inconsistent, in one cause of action.

Certain decided cases, such as *Crain vs. U. S.*, 162 U. S. 625, 16 S. Ct. 952, 40 L. ed. 1097; *Connors vs. U. S.*, 158 U. S. 408, 15 S. Ct. 951, 39 L. ed. 1033; *Brigeman vs. U. S.*, 140 Fed. 57; *Ackley vs. United States* (8 Cir.), 200 F. 217; *O'Neil vs. United States* (8 Cir.), 19 F. (2) 322; *Poffenbarger vs. United States* (8 Cir.), 20 F. (2) 42; *Hughes vs. United States* (6 Cir.), 114 F. (2) 285; *Pines vs. United States* (8 Cir.), 123 F. (2) 825; *United States vs. Brand* (D. C., N. Y.), 229 F. 847, have encouraged criminal pleaders to become incorrect and obscure. We do not believe that a close reading of any of these cases would convince this Court that an Indictment such

as the one in this case should be legally approved. It is just about the "omega" of license in criminal pleading.

In any event, the question is raised differently, and more effectively in the instant case, as a reading will disclose.

To approach this discussion from another angle, it is well to observe that first of all, two defendants were improperly joined in a one-count Indictment, which charged not a conspiracy but the commission of substantive offenses. The legal impropriety of doing so appears to the writer to be self-evident, and the prejudice which would naturally inure to each of the defendants by reason of such joinder cannot be denied. What each of the individual defendants said or may have done was proved, and although the jury may have been told that the other was not bound legally by said sayings and doings, yet the probability of their forgetting these cautions given by the Court are readily understandable. Such a course or procedure in a criminal case is an innovation in the law.

The first decision which counsel for the defendant could find, which seemingly authorized such a course of procedure, is the case of *Lucas vs. United States,* 104 Fed. (2d) 225, 70 App. D. C. 92. In that case two defendants were jointly indicted for feloniously entering a house and for larceny therefrom. A reading of the case will disclose that the legality of the Indictment was not challenged by any appropriate preliminary pleadings, because of the fact that these two defendants were so indicted for the substantive offense, but the legal propriety for so doing was accepted by defendants' counsel and separate trials and severances later were asked and denied. The real question presented is not the one which we urge here, but the legal

correctness of the denial by the Trial Court of such severance and separate trial.

Paragraphs 4 and 5 of the syllabus are as follows:

"Whether two persons jointly indicted for feloniously entering a house and larceny therefrom should be tried together rests within the sound judicial discretion of trial court."

"Refusal to grant a severance in prosecution for felonious entry into house and larceny therefrom was not an abuse of discretion, where there was no showing of prejudice."

In the opinion, at page 226, it is said:

"The grounds alleged for severance are that the co-defendant, Johnson, was hostile to Lucas and that the government's case was based wholly on Johnson's accusations. If the government had been compelled to try each separately, Johnson would have placed the blame on Lucas and Lucas on Johnson, and the probable result would have been an acquittal of both. In these circumstances it was within the sound judicial discretion of the trial court whether to grant separate trials. 'The general rule is that persons jointly indicted should be tried together. Granting separate trials is a matter of discretion. The mere fact that admissions have been made by one which are not evidence as against the other is not conclusive ground for ordering the parties to be tried separately.' Commonwealth v. Bingham, 158 Mass. 169, 33 N. E. 341, 342. In examining the evidence certified, we find nothing which shows that either accused sustained any prejudice by the course adopted."

In the cases of *United States vs. Hunt* and *United States vs. Henderson*, 120 Fed. (2d) 592, which cases arose in the 7th Circuit, the facts were that the two defendants were jointly indicted in six counts for violating the Mann

Act, three of which counts charged the transportation in interstate commerce of two girls from Benton Harbor, Michigan, to Chicago, Illinois, for the purposes of prostitution, and three counts charge the similar transportation of one girl from Chicago, Illinois, to Milwaukee, Wisconsin. The legality of so indicting these two men for so transporting these girls in interstate commerce was not questioned, but as far as the cases disclose was agreed to before the trial and then counsel for these defendants requested a severance of the cases and separate trials for these defendants. The Trial Court denied the requests for severance and Motion to require the Government to elect. Upon the trial both defendants were convicted. Upon appeal the action of the Trial Court in denying this severance was urged as error (see Par. f, p. 593).

In the opinion, at page 593, the Court states:

"We see no error in the trial court's refusal of severance. The two defendants acted jointly in most of the transactions which went to make up the crime charged. Most of the acts were done in each other's presence. Justice could be better served by a joint trial. The District Court correctly exercised its discretion. Lucas vs. United States, 70 App. D. C. 92, 104 F. (2d) 225.

"The six counts here charged were properly joined together, since all arose out of the same general transaction. Their allegations charge different phases of the same criminal plan, involving the same girls and the same general period of time. This case falls within the statute for joinder, which provides:

" 'When there are several charges against any person for the same act or transactions, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined,

instead of having several indictments the whole may be joined in one indictment in separate counts; and if two or more indictments are found in such cases, the court may order them to be consolidated.' (18 U. S. C. A. 557.)

"See Egan v. United States, 52 App. D. C. 384, 287 F. 958."

The above language is dictum, as it was not necessary to a decision of the case.

Certiorari was later denied.

In certain digests and texts this case is cited as authority for the statement that two defendants may be indicted and tried jointly for white slave violations where they acted jointly and mostly in each other's presence, but this case does not legally so hold, and is not either factually, or by virtue of the opinion, authority for such a legal innovation.

The writer cannot find any cases which bear directly upon the precise question presented in this case and it is significant that there is such an absence of decisions.

In the case of *Gillette vs. United States,* 236 Federal 215, decided by the Circuit Court of Appeals for the Eighth Circuit, the Court stated in paragraph one of the syllabus as follows:

"Act June 25, 1910, c. 395, §3, 36 Stat. 825 (Comp. St. 1913, §8814) declares that any person who shall knowingly persuade, induce, entice, or cause to be persuaded, induced, or enticed, any woman or girl to go from one state to another in interstate or foreign commerce, for the purpose of debauchery, or for any other immoral purpose, or with the intent and

purpose that such female shall 'engage in the practice of debauchery,' or any other immoral practice, shall be punished. HELD, that two distinct offenses are charged, one mere sporadic immorality, or 'debauchery,' which word, while including all kinds of excessive indulgences in sensual pleasures, is in the statute restricted to sexual immorality, and the other the practice of, or habitual indulgence in, such offenses."

In the opinion, at pages 217 and 218, the exact issue presented is set forth as follows:

* * * * *

"The charge as pleaded in the indictment seems to be a combination of the first and second clauses of section 3 of the act of Congress, approved June 25, 1910 (36 Stat. 825). That section, so far as the charge against Gillette is concerned, reads as follows:

" 'That any person who shall knowingly persuade, induce, entice, * * * or cause to be persuaded, induced or enticed, * * * any woman or girl to go from one place to another in interstate or foreign commerce * * * for the purpose of * * * debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of * * * debauchery, or any other immoral practice, whether with or without her consent.'

"The indictment charges that Gillette—'did unlawfully, knowingly and willfully induce and entice, and cause to be persuaded, induced, and enticed, a certain girl, to wit,——, to go from the City of Fargo to the city of Moorhead * * * for the purpose of debauchery and for an immoral purpose, to wit, that —— aforesaid should engage in the practice of debauchery and illicit sexual relations with the said Arthur Gillette.'

"It thus appears that Gillette was charged with the offense described in the second clause of section

3. In other words, after charging him with inducing and enticing the girl to go to Moorhead, and causing her to be persuaded, induced, and enticed to go there, for the purpose of debauchery and for an immoral purpose, the pleader proceeds and defines what Gillette's particular purpose was in enticing the girl to go to Moorhead, and that purpose is alleged to have been that the girl should engage in the practice of debauchery and illicit sexual relations with Gillette. We refer to this language of the indictment for the reason that the statute describing the offense charged uses the words 'with the intent and purpose,' while the language of the first clause of the section simply uses the word 'purpose.' We do not stop to consider whether the word 'purpose' is equivalent to the words 'intent and purpose,' but simply call attention to the fact that, in order to convict Gillette of the offense charged against him, the statute requires that the enticing of the girl to go to Moorhead should be with the intent and purpose, although the indictment says nothing about intent, other than what may be included in the word 'purpose.'

"We are of the opinion that to engage in the practice of debauchery and illicit sexual relations is a different offense than the offense mentioned in the first clause of section 3. To engage in the practice of debauchery and illicit sexual relations would seem to indicate a continued course of illicit sexual relations, such as living with a woman in a state of concubinage; otherwise there would have been no necessity for using the language in the second clause of section 3, as the language used in the first clause would have been sufficient. The word 'debauchery' is a word of broad signification. It includes all kinds of excessive indulgence in sensual pleasures of any kind, such as gluttony and intemperance; but the word is used in the statute with reference to immoral sexual relations."

In the case of *Roark vs. United States,* 17 Fed. (2d) 570, decided by the Circuit Court of Appeals for the 8th Circuit, the defendant was charged in four counts with (1) causing a woman on a named day to be transported by common carrier from El Paso, Texas, to Denver, Colorado, with intent to induce her to engage in illicit intercourse with him, (2) with having on the same day persuaded and induced the same woman to go in interstate commerce to Denver, Colorado, to engage in illicit intercourse with him, (3) with having on the same day caused the same woman to go in interstate commerce to Denver, Colorado, with the intent of inducing her to engage in prostitution, and (4) with having on the same day persuaded and induced her to go in interstate commerce to Denver, Colorado, with intent to induce her to engage in prostitution. He pleaded guilty to the charges and was sentenced to pay a fine and to serve consecutive prison terms. He then challenged the legality of the sentences so pronounced.

The Court denied appellant's contentions and held, after a review of many authorities, that distinct violations of the White Slave Law growing out of the same transaction constituted separate offenses and were properly alleged in separate counts.

In the case of *Gillenwaters vs. Bittle, Warden,* 18 Fed. (2d) 206 (C. C. A., 8th Circuit), the petitioner was indicted in the Eastern District of Illinois in four separate counts for transporting four women in interstate commerce in the same vehicle for immoral purposes. He was convicted upon a trial on all four counts and was thereafter sentenced by the Trial Court to pay a fine of $1,000.00 on each count and imprisonment in the penitentiary for five years on each count, with the proviso that

the prison sentences should run consecutively instead of concurrently. He served the first sentence and then sued out a writ of Habeas Corpus in the District Court for the District of Kansas, seeking his release on the ground that the offenses charged in the four counts of the indictment constituted really but one transaction, and therefore that only a single sentence, within the limits of the statute, could have been imposed. Upon the District Court hearing the Writ of Habeas Corpus was denied. Petitioner brought the case then to the Circuit Court of Appeals.

Paragraphs 5 and 6 of the syllabus state:

> "5. That four women were transported in interstate commerce in same vehicle for immoral purposes held not necessarily to imply single offense."
>
> "That four women were transported in interstate commerce at same time in one conveyance for immoral purposes, in violation of Mann Act (Comp. St. §8812-8819), HELD not necessarily to imply a single offense."
>
> "6. Distinct violation of law growing out of same transactions constitute 'distinct offenses.'
>
> "Distinct violations of law growing out of the same transactions constitute distinct offenses; test of identity of offenses being whether same evidence is required to sustain them."

In an opinion written by Circuit Judge Van Valkenburgh the Court said, at page 208:

> "(5) Furthermore, under the rule laid down in Ebeling v. Morgan, 237 U. S. 625, 35 S. Ct. 710, 59 L. Ed. 1151, the mere fact, if that had been disclosed, that the four women were transported together in one conveyance, would not necessarily imply a single offense. In the case just cited the defendant in one transaction stole a number of mail sacks and cut them

open, with the intent to steal and carry away the contents thereof. He was indicted upon separate counts for the cutting of the several sacks, and upon conviction was sentenced consecutively, making in all a period of 15 years' imprisonment; having served the sentence of 3 years imposed under one count, Ebeling applied to the District Court of the United States for a writ of habeas corpus, upon the ground that he had endured all the punishment that could be legally imposed upon him, for the reason that the act charged in the several counts constituted but one transaction. The writ was denied, and the Supreme Court in affirming this action said:

"'Although the transaction of cutting the mail bags was in a sense continuous, the complete statutory offense was committed, every time a mail bag was cut in the manner described, with the intent charged. The offense as to each separate bag was complete when that bag was cut, irrespective of any attack upon, or mutilation of, any other bag.'

"(6) It is well settled that distinct violations of law growing out of the same transaction constitute distinct offenses. Albrecht v. United States, 47 S. Ct. 250, 71 L. Ed. ——, opinion filed January 23, 1927.

"In the case at bar differing evidence must necessarily have been introduced with respect to the four women transported. In each case the attitude of mind, to wit, the intent, was a personal one. What happened thereafter might, or might not, have been due in each case to an original intent, nor could such intent as to one be imputed to the others. This view is in harmony with that announced by this court in Roark v. United States (No. 7436), 17 F. (2d) 570, decided January 31, 1927.

"It follows that the decree below must be affirmed."

If these 8th Circuit cases correctly state the law then the inverse of the proposition should be true, and that is

that distinct offenses may not be lumped together in one count.

In the case of *Hill vs. United States,* 150 Fed. (2d) 760, decided by the Circuit Court of Appeals for the 8th Circuit, the defendant, Hill, was indicted and convicted on the charges that he did cause to be transported in interstate commerce one Virginia Patterson and that he aided and assisted in obtaining such transportation for the purpose of prostitution and debauchery and other immoral purposes, in violation of Section 2 of the Mann Act, 18 U. S. C. A., Section 398.

In the opinion, at page 761, it is said:

> "The statutory offense of causing transportation of a woman in interstate commerce for immoral purposes, or of aiding in such transportation, as defined in this section of the Act, and the offense of inducing the woman to go in interstate commerce for immoral purposes, defined in section 3 of the Act, 18 U. S. C. A., § 399, were separate and distinct offenses, and that (146 F. 2d, page 538) the only way to make that distinction effective was 'to eliminate as causes for transportation under section 2 the kinds of causation covered in section 3 by the expressions 'persuade, induce entice, or coerce.' It was pointed out that the word 'cause,' as used in the section of the Act on which this indictment is based, was limited by exclusion of the means of causing or bringing about set forth in section 3 of the Act."

If these four 8th Circuit cases state the law there cannot be much question about duplicity of the indictment in this case. Title 18, U. S. C. A., Section 557, specifically directs the proper course to pursue. It provides that:

> "When there are several charges against any person for the same act or transaction, or for two

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oe acts or transactions connected together,
c wo or more acts or transactions of the same
j crimes or offenses, which may be properly
w instead of having several indictments the
ay be joined in one indictment *in separate*
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well t direct the Court's attention to the very
eral d case of *United States vs. St. Clair*, 62 Fed-
trict ment 795. The opinion was written by Dis-
Octob Paul, of the Western District of Virginia, on
h, 1945.

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of th endant, St. Clair, was indicted for violations
pleaded States White Slave law in 12 counts. He
ment ty to 10 counts and was sentenced to imprison-
the sh count for 2½ years, with the provision that
rentl s should run consecutively and not concur-
tentia r he was confined in the United States Peni-
crimi Atlanta, Georgia, he filed a petition in the
tence e in which he requested the Court that sen-
impo o revise and reform the sentences theretofore
relat n him, his claim being that Counts 2 and 3
hicle he transportation of two women in one ve-
simil same day between the same points; that a
Coun tion existed as to Counts 4 and 5, and as to
stead d 7 and as to Counts 8, 9 and 10. That in-
shoul ng ten offenses in ten counts the Indictment
were been confined to four counts, because there
occas ansportations of 2, 2, 2 and 3 women on four
I tween four named points.

Cour paragraphs 4, 5 and 6 of the syllabus, the

Distinct violations of law growing out of

same transaction may be charged as separate offenses."

"5. In determining whether a single transaction may constitute more than one distinct offense, test of identity of offenses is whether same evidence is required to sustain them."

"6. Where violation of White-Slave Traffic Act involves transportation of more than one woman on same trip in same vehicle, the transportation of each woman constitutes a separate offense for which separate sentences may be imposed."

On page 799 it is said:

"When we come to apply this test to the counts of the indictment in the instant case, it seems apparent that they charge a separate crime. As pointed out heretofore offenses against this statute involve not only an interstate transportation but require as an equally essential element that the transportation be with the unlawful purpose or intent condemned by the statute. Proof of this unlawful purpose must be made in every case in order to prove the crime. And proof of a defendant's intention as to one woman is no proof of his intentions as to another. It might well be that a person transporting several women in an automobile in an interstate movement might have as to one or more of them the unlawful purpose set out in the statute, but have no such intention as to the others. If, for example, this case had been tried on the merits, the government would have been under the necessity of proving the petitioner's unlawful purpose as related to each of the women involved. Proof of such purpose as to Henrietta Sorey (2d count) would not constitute proof of his intention as to Sophia Brosko (3d count), who was in the automobile on the same trip. Or if the defendant had pleaded guilty to the 2 counts, thereby admitting his unlawful purpose as to Henrietta Sorey and had pleaded not guilty to the 3d count, the government, in

order to convict upon the 3d count, would have been compelled to submit proof of his intention as to Sophia Brosko. Neither the admissions of the defendant nor proof by the government as to defendant's intentions as to one of the women would suffice as proof of his intentions as to the other. Different and independent evidence would have been required to prove the intent in each case. It might be added that it would also have been necessary to prove the transportation in each case."

On page 802 it is said:

"(6) There will be found numerous other cases in agreement with the foregoing citations and referred to therein, but which need not here be listed. Applying these principles, which appear to me to be eminently sound, to the instant case, it appears clear to me that each of the counts in the indictment set forth a separate offense. In none of the counts would proof of the allegations therein have been sufficient to prove the offense charged in any other count. *While the act of transportation was a single one, it was necessary in order to convict on any count, to prove the transportation of the particular WOMAN NAMED IN THAT COUNT AND FURTHER THAT THE UNLAWFUL intent existed as to that particular woman at the time of the transportation.* In each case the proof, or failure to prove, these necessary facts was not dependent upon proof of similar facts involving any of the other women. I am of opinion, therefore, that the sentence imposed in this case was proper and that petition for its reformation should be denied."

In the light of these cases, when compared with the District Court and Circuit Court opinions, it would appear that if it best serves the then purposes of the Government, and will keep a man in confinement, each of the groups

of words separated bby the word "or" define separate and distinct offenses, butt when it would best serve the Government's purposes, and also keep a man in confinement, no separate offensess are stated in the law if the United States Attorney has changed the word "or" in the Statute to the word "and", which is not in the law. This brings about another man aand satyr situation, where man again in law and not in fable "blows hot and cold."

The writer believes that these cases demonstrate that the Indictment was not proper legally, and that the portions of the Motion to Quash, Special Demurrer, and Motion For a Directed Verdict, attacking same for duplicity, should have been sustained.

Relating to Specification of Error No. 4

The following point is urged under this heading:

Claimed erroneous statements in the Court's Charge to the Jury in a criminal case may be objected and excepted to, if timely done, and may be the basis for the reversal of a conviction in a criminal case.

The objections and exceptions taken by counsel for the defendant to the Court's instructions are to be found in the printed record (T. of R. 237 to 239), and they relate largely to other Assignments of Error which will be discussed later in other portions of the brief, but have a place herein because they disclose that the precise questions were called properly, timely and specifically to the Court's attention, and that the questions raised were preserved in the record for the purposes of review.

On page 237 of the printed record exception was taken to the Court's deletion of the charge that the defendant

"knowingly transported two girls from Nebraska to Wyoming in interstate commerce for the purpose of debauchery," which we claim was legally improper and which is discussed under Assignment of Error No. 5.

On pages 237 and 238 of the printed record objections were taken and exceptions allowed to the Court's illustrative definition of "debauchery," which we contend was not correct. We claim that "debauchery" was properly defined in Defendants' Instruction 4, at pages 40 and 41 of the Transcript of the Record, and is referred to in Assignment of Error No. 6.

On page 238 of the printed record the alleged fatal variance between the pleading and proof as to the two young women not being transported from Mellor's Holt County ranch to Moran, Wyoming, but having walked across the Nebraska-Wyoming State Line voluntarily, is called to the Court's attention and is discussed under Assignment of Error No. 11.

On pages 238 and 239 of the printed record, the alleged fatal variance between the pleading and proof as to the fixed terminus in the Indictment of Moran, Wyoming, and the proof of the actual terminus of Signal Mountain Lodge is called to the Court's attention and objected and excepted to. This matter is discussed in Assignment of Error No. 12.

On page 239 of the printed record, the defendant objected and excepted to that portion of the Court's Charge "that the jury will not be allowed to separate until they have arrived at a verdict." This instruction was not proper and had a tendency to force a verdict. To be proper

it should have contained the added language "or agree to disagree."

Relating to Specification of Error No. 5

The following point is urged under this heading:

A Trial Court has no right, as is customary and proper in a pleading in a civil case, to delete portions of an Indictment from the consideration of a Jury on the theory that it is surplusage, or cures a duplicity, or has not been proved, but must submit the Indictment to the Jury as returned, as such a course of the practice of so deleting would amount to an amendment of the Indictment and would in time lead to the breaking down of many fundamental constitutional rights.

The Court had no power or authority in law to delete from the Indictment or actually or theoretically amend same in the way and manner heretofore claimed, it being the established law of the United States that an Indictment cannot be amended legally by the Judge or the prosecutor or anyone else, in whole or in part, everyone, including the Court, being powerless to dot an "i" or to cross a "t" in same, and the Court having submitted to the Jury a modified charge and another and different charge than that contained in the Indictment, and said acts of the Court in so doing amounting to an amendment of the Indictment, not by actually marking out words from the Indictment, but by a failure to submit the actual wording of same to the Jury, renders the verdict of the Jury a nullity, because by said deletions a case was presented to the jury for their verdict upon an Indictment upon which said defendants, and each of them, were not arraigned and to which they had not entered a plea; and the case was thus submitted to the Jury on a different set of

allegations than those contained in the Indictment, and not upon the charges as actually made in the Indictment; and the verdict of the Jury as to the defendants' guilt was not responsive to the charge made in the Indictment but was responsive to an amended Indictment upon which defendants had not been arraigned or had pleaded.

Relating to Specification of Error No. 6

The following point is urged under this heading:

It is reversible error for a Trial Court to refuse to give instructions requested by a defendant, which properly present his side of, or his theory of, the case, or which correctly set forth or define legal propositions involved in the case.

The eight instructions requested by the defendant and refused by the Court are set forth in the printed record (T. of R. 38 to 42). Because of the fact that this brief is already assuming great proportions as to size, we will have to forego quoting verbatim the instructions here, and any detailed discussion of same.

Instruction No. 1 is based upon the language used in *Mortensen vs. United States*, 322 U. S. 369, 64 S. Ct. 1037, 88 L. ed. 1331.

Instruction No. 2 deals with the fact that the admitted immorality of the two complaining witnesses were matters which the Jury were permitted to consider in weighing their credibility.

Instruction No. 3 deals with the fixed terminus in the Indictment and the legal effect of the fact that the fixed terminus in the Indictment was not the real terminus, the

legal phases of which are discussed under Assignment No. 11.

Instruction No. 4 gave a correct definition of debauchery as applied to the facts in the instant case.

Instruction No. 5 defined correctly the terms "dominant purpose," "primary purpose" and "purpose and intent," as used in *Mortensen vs. United States*, supra.

Instructions 6 and 7 were requests for directed verdicts as to each of the defendants.

Instruction No. 8 dealt with the presumption which the Jury could indulge in because of the failure to place upon the witness stand four witnesses from Signal Mountain Lodge, Wyoming, whom the Government had subpoenaed but who were not produced as witnesses to testify at the trial. Each and all of these instructions were proper in form and were pertinent to the issues from the standpoint of the defendant's case, and it was error for the Court to refuse to give same.

Relating to Specifications of Error Nos. 7, 8 and 9

The following points are urged under this heading:

Where the evidence is insufficient to warrant the submission of a case to a Jury, it is error on the part of a Trial Court not to sustain a Motion For a Directed Verdict of Dismissal.

The intent or purpose of the transportation of a woman, by a defendant in interstate commerce, under 18 U. S. C. A. 398 must be proved by direct or circumstantial evidence beyond a reasonable doubt, and may not be inferred from the doing of any other act or acts.

Before a defendant may be convicted of the unlawful transportation of a woman in interstate commerce in violation of 18 U. S. C. A. 398, the Government must prove by evidence, either direct or circumstantial, beyond a reasonable doubt, that the dominant and efficient purpose prompting and impelling the defendant to make the alleged interstate transportation of a woman was one of the intents or purposes denounced by said Act, and it will not suffice to prove that the said transportation was merely incidental to another primary purpose even though it was also partially for one of the intents and purposes denounced by the Act.

Mortensen vs. United States, 322 U. S. 369, 64 S. Ct. 1037, 88 L. ed. 1331.

If a man travels in an automobile from one State to another on a previously planned vacation trip, and takes with him, as an afterthought, a woman with whom he intends to have illicit sexual relations, or he has illicit sexual relations with her at the ultimate destination, he does not violate 18 U. S. C. A. 398, because any such immoral purposes, intents and acts are but incidents to the trip.

The evidence given by the two women and the two defendants, Mellor and Ford, clearly discloses that the intent and purpose of the defendants was not that which was alleged in the Indictment but was a vacation and fishing trip planned and prepared for by the defendants long before they ever met these two women hitch-hikers north of O'Neill, Nebraska. Their evidence and the facts relating to the matter clearly show that they would have taken this interstate trip regardless of whether they ever met these two women or not. In the testimony both of the women substantiate this claim.

It is difficult to coneceive just what would be the advantage, or just why it was necessary, for these two defendants to leave their lonely ranch home in Holt County, Nebraska, which was occupied by these two men alone and these two women, and journey to a crowded Wyoming vacation resort filled with cabins, in order to have illicit sexual relations with these two women. Just how this could be more effectively and better accomplished in a crowded cabin camp in Wyoming than in an isolated ranch house is too absurd for the writer of this brief to entertain. It was a trip from the solitudes to teeming mankind. Common sense should dictate that the purposes of the trip were not those which the Government contend for. Harkening back to the rule of cause and effect, we feel sure will cause us to say that the cause contended for by the Government was not adequate to produce the claimed effect, but that the cause claimed by the defendant—a vacation trip—was adequate for these parties to leave the ranch home and go to the Wyoming cabin camp.

In reading some of the District Court and Circuit Court cases one is confronted with the statement that if one of the intents and purposes of the interstate trip was to transport a woman from one state to another for prostitution, debauchery or other immoral purposes, etc., then a conviction might be had legally even though the defendant had other legal intents or purposes in making the trip. There is a great deal of uncertainty in these decisions. Some cases hold that if the claimed immorality was merely an incident of the trip, then no conviction can be had. We do not need to rely upon any such decisions in order to know absolutely what the correct law is.

We refer the Court to the recent case of *Mortensen*

vs. U. S., decided by the United States Supreme Court, and which is reported in 322 U. S. 369, 64 S. Ct. 1037, 88 L. ed. 1331.

In the opinion of the Court, written by Mr. Justice Murphy, at pages 926, 927 of 88 L. ed., it is said:

* * * * *

"The primary issue before us is whether there was any evidence from which the jury could rightly find that petitioners transported the girls from Salt Lake City to Grand Island for an immoral purpose in violation of the Mann Act.

"The penalties of sec. 2 of the Act are directed at those who knowingly transport in interstate commerce 'any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice.' The statute thus aims to penalize only those who use interstate commerce with a view toward accomplishing the unlawful purposes. To constitute a violation of the Act, it is essential that the interstate transportation have for its object or be the means of effecting or facilitating the prescribed activities. Hanseh v. Haff, 291 U. S. 559, 563, 78 L. ed. 968, 971, 54 S. Ct. 494. An intention that the women or girls shall engage in the conduct outlawed by Sec. 2 must be found to exist before the conclusion of the interstate journey and must be the *dominant* motive of such interstate movement. And the transportation must be designed to bring about such result. Without that necessary intention and motivation, immoral conduct during or following the journey is insufficient to subject the transporter to the penalties of the Act.

* * * * *

"Our examination of the record in this case convinces us that there was a complete lack of relevant evidence from which the jury could properly find or infer, beyond a reasonable doubt, that petitioners transported the girls in interstate commerce 'for the purpose of prostitution or debauchery' within the meaning of the Mann Act."

In the Circuit Court opinion it is said: "We do not understand the Mortensen case as holding that an instruction on illicit purpose in a Mann Act prosecution must use the precise words *dominant purpose.*" That is, however, what the Supreme Court said in these words: "The conduct outlawed by Section 2 must be found to exist before the conclusion of the interstate journey and must be the *dominant* motive of such interstate movement." In the District and Circuit Courts the rule of *stare decisis* compels these Courts to follow and apply the law laid down by the Supreme Court, instead of attempting to change, differentiate, or use other and different language and words of different meaning.

It will be noted that the Supreme Court of the United States did not concur in the language of opinions from lower Courts to the effect that one of the intents or purposes must be to do the thing or things denounced by the White Slave Act, but our highest Court made use of the more exacting language that the purpose or intent to do the things denounced by the White Slave Law "must be the *dominant* motive of such interstate movement."

The word dominant, the writer contends, was used advisedly and not inadvertently.

The Universal Dictionary of The English Language defines dominant to mean prevailing; to have dominion

over; to have authority; prevailing; or having chief prominence and importance.

A study and analysis of the evidence in this case discloses clearly that the things denounced by the White Slave Law and set forth in the Indictment were not the dominant motive of the alleged interstate movement; hence no legal conviction of the defendant may be had, even though for argument's sake we admit the legality of the Indictment and forget all about the other legal points herein claimed or advanced by the defendant.

Relating to Specification of Error No. 10

The following point is urged under this heading:

If an opposing counsel is guilty of misconduct in his argument to the Jury, and timely and proper objections and exceptions are taken to same, but the Court refuses to take such appropriate steps to obviate the error or to correct offending counsel, and fails to properly instruct the Jury not to consider same, and refuses a timely request for a mistrial, such misconduct is such prejudicial error as will warrant a reviewing Court to reverse the conviction.

The portion of the record which gives rise to this assignment of error is to be found in the printed record (T. of R. 217 to 220, incl.).

The present size of this brief will not permit us to set forth all of that record here relating to the alleged misconduct of opposing counsel, or an exhaustive discussion of same.

Briefly, counsel for the Government in his argument to the jury stated that the two defendants, naming them, were "partners in crime," which statement was later

reiterated by counsel as "partners in whatever happenings you find from the evidence and the law.'" Later counsel stated that "as a result of their escapade with these two men, these two girls were sent to the Industrial School for Girls at Geneva, where they are now confined." Later counsel said that if the defendants "are not found such violators, then we might as well tear up this law, throw into the ash can, and send notice to all the play boys that henceforth they can transport a female from one state to another for the purpose of debauchery and defile the womanhood of America." Later counsel said, "here are two young girls on one side and two men on the other. The men say one thing; the girls say another. It is for you to decide whether you are going to believe the story of the two girls or the story of the two men.'

After each of these statements appropriate objections were made, which were overruled, and exceptions were taken to the rulings, and allowed by the Court. Twice a mistrial was asked which the Court overruled. Exceptions were taken to these rulings and were allowed by the Court.

That these statements were highly improper cannot be denied successfully, and that a mistrial should have been granted seems clear. A reading of the record will show that no oral admonitions were given to the Jury by the Trial Judge to disregard these statements, and if they had been given the error could not have been cured, as far as the Jury was concerned, any more than the removal of a poisoned dart would extract the poison from the flesh which it penetrated.

It has been aptly said in *Leo vs. State*, 63 Nebr. 723, 89 N. W. 303:

"The poisoned shaft had sped its way, and it is difficult to conceive how the jury could thereafter have been oblivious of or ignored the fact."

Although the Trial Judge did not in so many words approve of the statements made by counsel, yet the Court's rulings did not go the length of repudiating them and putting the matter before the Jury in the proper light.

We do not believe that it is necessary to cite any cases in support of our claim under this Assignment of Error as counsel's statements, though unintentional, went far beyound the legal propriety of proper argument to the Jury.

Relating to Specification of Error No. 11

The following point is urged under this heading:

When the Government, in an Indictment, fixes definitely the actual starting point and the destination of the alleged interstate transportation, it must prove same as alleged, and if the terminus fixed in the Indictment is not the terminus of the journey, as shown by the evidence, but is a point beyond that fixed in the Indictment, the prosecution must fail.

The prosecution in formulating the allegations of the Indictment had full knowledge of the facts. They specifically selected a starting point and a terminus. The starting point was proved, but the unlawful purpose and intent prior to the beginning of the trip and during the transportation between the starting point and the fixed terminus utterly failed. The Government's case cannot be bolstered up by proof of what the women claimed occurred beyond Moran, Wyoming. Either the women changed their stories as originally told to the prosecution,

or the person drafting the Indictment was careless in remembering the nature of his proof. When no proof of the unlawful intent or purpose of the alleged unlawful transportation was made, then the charge should and must fail. The facts proved did not support the allegations of the Indictment as to the intent and purpose of defendants in transporting the two women between the two pleaded points, starting in Nebraska and ending at Moran, Wyoming.

The writer was unable to find any case which passed upon this question either directly or indirectly, but plain common sense should dictate that a pleader is bound by his fixing of a starting point and a terminus as far as the intent and purpose of the transportation is concerned.

Relating to Specification of Error No. 12

The following point is urged under this heading:

In a prosecution under 18 U. S. C. A. 398, relating to a case of interstate transportation, the Government's proof must show, among other things, beyond a reasonable doubt, that the defendant actually transported the woman in question from one State to another by means of some conveyance, and this proof is not made by showing that the alleged victim voluntarily walked across the State Line, as such a course of procedure would break the continuity and create a hiatus, in the alleged interstate transportation.

The proof offered by the Government and the testimony of all of the witnesses belied the allegation that defendants transported the women from Mellor's ranch home in Nebraska to Moran, Wyoming, there being a hiatus or gap in the alleged transportation, when the two women alighted from the car before they left Nebraska,

and voluntarily walked across the State Line into Wyoming, where the defendants picked them up.

Counsel has searched the books for cases on this subject, but could not find any case dealing with the question presented here except the District Court case of *United States vs. Jamerson,* 60 Federal Supplement 288. This opinion was written by District Judge Graven of the Northern District of Iowa.

The facts in the case were that the defendant was indicted for transporting two women in interstate commerce from Omaha, Nebraska, to Mason City, Iowa, in violation of the provisions of the United States White Slave Law.

The defendant's evidence showed that the two girls whom the indictment alleged were so transported from Omaha, Nebraska, to Mason City, Iowa, walked across the State Line, which divides Nebraska and Iowa at a point on the interstate toll bridge over the Missouri river, but the two girls denied same.

It was the claim of the defendant that such fact, if true, disproved the interstate transportation, but District Judge Graven decided that it did not have that effect.

Of course, the first thing to remember is that the case of *U. S. vs. Jamerson,* supra, differs from the instant case in that there was a real dispute as to whether the girls actually walked across the line which divided Nebraska and Iowa, and the opinion so states. In the instant case all of the witnesses are agreed on that fact.

A reading of the opinion discloses that the learned Trial Judge was much concerned with the thought that

some offenders against the White Slave Law might escape punishment if the walking of the woman across the State Line would break the interstate transportation. He, therefore, felt that it was his duty to close this loop-hole judicially, instead of leaving the matter of corrective legislation, if any, to the proper branch of Government, to-wit, the legislative branch. Instead of suffering judicial erosion of the law and the intent of Congress, as he styles it, he would much prefer, in order to secure a conviction, to have the doctrine announced and promulgated legally "that that which is, in truth and fact, is not so in law."

The Act specifically denounces transportation for the purpose of prostitution, debauchery, etc., which means a conveying of the so-called victims, and does not presume to punish a man who walks with a woman who might freely and voluntarily on her own power pass across a State Line, or one who follows a woman, on foot or in a vehicle, who has seen fit to break the interstate transportation by crossing the State Line on her own two feet.

To hold that a woman is transported across a State Line by a man, when she actually crosses same by her own voluntary walking, is not a laudable search for a Congressional intent, or a reasonable construction of a plain law, but a deliberate, unreasonable deduction, which has no basis in fact and should have no standing in law. Transportation by another is one thing. Voluntary walking is another and different thing. In the absence of a conspiracy charge involving both the man and the woman—the alleged transporter and the alleged transportee—there is no way in law to reach such a planned effort on the part of a man and woman to bring their conduct outside of the scope of the law, except to proceed against the both of them as co-conspirators, a thing which was not done in the

instant case and which probably could not be done legally, because the woman is not an accomplice or an offender according to the language of the law.

Transportation means the act of carrying or conveying and does not mean the voluntary walking by the woman whom it was charged was transported.

We do not believe that it is good law or good common sense to claim that the voluntary walking of another is transportation by someone else who is in no way doing the walking or assisting in it in any way.

CONCLUSION

For each and all of the foregoing reasons we feel that the Court should grant certiorari in this case.

Respectfully submitted,

EUGENE D. O'SULLIVAN and
HUGH J. BOYLE,
Attorneys for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1361

RALPH B. MELLOR, PETITIONER

v.

UNITED STATES OF AMERICA

No. 1362

CHARLES J. FORD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On March 21, 1945, petitioners were jointly indicted (R. 3–4) in the United States District Court for the District of Nebraska in one count charging a violation of Section 2 of the Mann Act, 18 U. S. C. 398.[1] The indictment alleged

[1] This provision reads as follows:

"Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in

that on or about August 10, 1944, petitioners wilfully transported two girls from petitioner Mellor's ranch home in Nebraska to Moran, Wyoming, for the purpose of prostitution and debauchery and for other immoral purposes, and with intent to compel the girls to give themselves up to debauchery and to engage in other immoral practices. After various pre-trial motions were disposed of, the case went to trial, the jury returned a verdict of guilty (R. 67–68), and each petitioner was sentenced to imprisonment for a term of three years (R. 92–94). Their motions for a new trial were denied (R. 70–86), and they

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any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $5,000, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court."

appealed to the Circuit Court of Appeals for the Eighth Circuit. In an exhaustive opinion (R. 242–256), that court affirmed the judgments of the district courts.

The evidence in support of the verdict of the jury may be briefly summarized as follows:

Petitioner Mellor operates a ranch in Nebraska (see R. 157); he is 42 years old (R. 205). Petitioner Ford worked for Mellor on the ranch (R. 157), and is 38 years old (R. 170). The girls involved—Lois Jean Milacek and Doreen Hasenpflug—were 14 and 16 years old, respectively, at the time of the events in question (R. 106, 120). On August 8, 1944, the girls were walking along the highway en route to a nearby town in Nebraska when petitioners drove up and invited them into their automobile (R. 106–107, 120). Petitioners stopped at a nearby town and bought the girls whiskey and then took them to the Mellor ranch (R. 107, 121). Later in the evening, petitioners drove the girls to a nearby dance hall, and then picked up Lois when the dance was over (R. 107, 122).[2] They returned to the ranch, where Lois slept that night. The next morning, petitioner Mellor and Lois drove in Mellor's automobile to Lynch, Nebraska, and picked up Doreen, and later petitioner Ford joined them. Mellor gave Doreen money, and the girls bought clothes. (R. 107, 122.)

[2] Doreen apparently returned to her home after the dance (R. 107, 122).

Petitioners had told the girls that they were going on a fishing vacation in Wyoming and that if the girls would accompany them "we could have anything we wanted or do anything we wanted after we got there" (R. 107, 121–122). The girls agreed to accompany petitioners, and on the third day after the meeting on the highway the party left the ranch for the vacation in Wyoming. En route, the girls fell asleep in the car, but when petitioners reached the boundary line between Nebraska and Wyoming, they awakened the girls and instructed them to walk across the state line because it was illegal to transport them over the line. The girls walked the few feet necessary to cross the boundary, and then returned to the car. (R. 108, 123.) In the course of the trip, petitioners gave the girls money (R. 108, 123). Petitioners rented a cabin at the Signal Mountain Lodge in Wyoming, and they told the girls that they had registered them as their wives (R. 108–109, 124). The cabin had two bedrooms, and each couple occupied a room (R. 109, 124). Lois testified that petitioner Ford "forced me to have intercourse with him" (R. 110). Doreen testified that petitioner Mellor had sexual intercourse with her at the cabin (R. 124). The girls left petitioners after ten days of this and asked them to furnish them with money to return to their homes, as they had promised, but petitioners refused (R. 110, 124). Both girls eventually returned home after first going to

California, where one of them had a sister (R. 110, 124).

The theory of the defense was that petitioners were going on a fishing trip to Wyoming, and the girls wanted to go to California, so petitioners gave them a ride as far as Wyoming. The girls stayed at the cabin one night, both sleeping together in one bedroom, and on the following day petitioners sent them on their way. Petitioners testified that they did not at any time do anything more than furnish the girls an unexciting automobile ride from Nebraska to Wyoming. (See R. 160–166, 188–194, 196–202.)

Petitioners' 91 pages of petition and supporting brief and 12 specifications of error present the same contentions which they unsuccessfully urged in the district court on motion for a new trial and on the appeal to the circuit court of appeals. Judge Delehant, in the district court, wrote a lengthy opinion (R. 70–86) in which he discussed each of petitioners' contentions *seriatim* and demonstrated why they are without merit. On the appeal, Judge Woodrough, speaking for the court, wrote an equally exhaustive opinion (R. 242–256), again discussing and rejecting petitioners' numerous arguments. Since both courts below have carefully demonstrated in considered opinions the lack of merit in petitioners' contentions, and since the opinions reflect the Government's answers to those contentions, we believe there is little to be gained in reiterating here

what both courts already have convincingly stated. Accordingly, we respectfully submit, on the basis of the opinions below, that petitioners' contentions are without merit and that their petitions should accordingly be denied.

GEORGE T. WASHINGTON,
Acting Solicitor General.
THERON L. CAUDLE,
Assistant Attorney General.
ROBERT S. ERDAHL,
IRVING S. SHAPIRO,
Attorneys.

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